

**FILED**  
DISTRICT COURT OF GUAM

FEB - 7 2005

IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

MARY L.M. MORAN  
CLERK OF COURT

\* \* \*

148

JULIE BABAUTA SANTOS,  
individually, and on behalf  
of all those similarly situated,  
Plaintiffs,

vs.

FELIX A. CAMACHO,  
Governor of Guam, et al.,  
Defendants.

CIVIL CASE  
NO. 04-00006

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE JOAQUIN V.E. MANIBUSAN, JUNIOR  
Magistrate Judge

HEARING ON MOTIONS

THURSDAY, JANUARY 25, 2005

\* \* \*

ORIGINAL

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

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## I-N-D-E-X

GOVERNMENT WITNESS	DIRECT	CROSS	REDIRECT	REDIRECT
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Artemio B. Ilagan	19 (by Mr. Weinberg)			
		41 (by Mr. Mantonona)		
		43	51	
Lourdes Perez	57 (by Mr. Cohen)			
		79 (by Mr. Mantonona)		
		82		

## E-X-H-I-B-I-T-S

GOVERNMENT EXHIBIT	IDENTIFIED/ADMITTED
--------------------	---------------------

HH - Certificate of Emergency	26	73
R - Charles Troutman letter	51	103
KK - Certificate of Emergency	59	73
Joint 16 - Mantonona contract	77	78
BB - Letter to Attorney General re substitution of counsel	82	84
DD - Response from Attorney General	84	86

1 HAGATNA, GUAM; TUESDAY, JANUARY 25, 2005; 10:12 A.M.

2 \* \* \*

3 THE CLERK: Civil case 04-00006, Julie Babauta  
4 Santos, individually, and on behalf of all those  
5 similarly situated, versus Felix A. Camacho, Governor  
6 of Guam, et al.; petitioner's motion for orders  
7 approving the administration plan and amending notice;  
8 motion to strike appearances and pleadings; and motion  
9 for relief from order issued by the Court on November  
10 12, 2004.

11 Counsel, please state your appearances.

12 MR. PHILLIPS: Good morning, Your Honor, Mike  
13 Phillips for the petitioner Julie Babauta Santos and et  
14 cetera.

15 MR. CALVO: Eduardo Calvo of Calvo and Clark,  
16 on behalf of Felix Camacho, Governor of Guam.

17 MR. JACOB: Rodney Jacob, Calvo and Clark, on  
18 behalf of Felix Camacho, Governor of Guam.

19 MR. BENJAMIN: Daniel Benjamin, Calvo and  
20 Clark, on behalf of Felix Camacho, Governor of Guam.

21 MR. CALVO: And Your Honor, with us today is  
22 Governor Camacho.

23 THE COURT: The Court notes the presence of  
24 the Governor.

25 MS. TAITANO: Shannon Taitano, Office of the

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District Court of Guam



1 Governor, counsel for the Governor of Guam.

2 MR. MANTANONA: Good morning, Your Honor,  
3 Rawlen Mantanona for defendants Artemio Ilagan,  
4 Director of Revenue and Taxation, and for Director  
5 Lourdes Perez, Director of Department of  
6 Administration, also defendant.

7 Thank you, Your Honor.

8 MR. COHEN: Stephen Cohen on behalf of all the  
9 respondents, Your Honor.

10 MR. WEINBERG: And Rob Weinberg from the  
11 Attorney General's Office, also on behalf of all of the  
12 respondents.

13 THE COURT: All right. The matter is before  
14 the Court today based on various motions. It appears  
15 that the government's motion, the Attorney General's  
16 motion to strike needs to be heard by the Court first.

17 Mr. Weinberg and Mr. Cohen.

18 MR. WEINBERG: Yes. Your Honor, would you  
19 want me up here?

20 THE COURT: Please, you could take the podium  
21 if you desire or you can argue there, whatever is more  
22 convenient for you.

23 All right, then you may be seated where you're  
24 at.

25 MR. WEINBERG: Thank you, Your Honor.

1 MR. CALVO: Excuse me, Your Honor, if I may?

2 THE COURT: Yes.

3 MR. CALVO: I think connected to the motion to  
4 strike, Your Honor, is also our notice of substitution  
5 of counsel, and however it pleases the Court; would the  
6 Court like to deal with that first so that we can enter  
7 our appearance formally as substituted counsel, or as  
8 counsel of record for the Governor of Guam? It seems  
9 like that might be the first thing that the Court may  
10 want to consider.

11 THE COURT: Well, the Attorney General has  
12 filed a motion to strike these notices that have been  
13 filed with the Court, so I suppose dealing with either  
14 one would resolve the issue before the Court. See, you  
15 don't have a motion that's pending, is that correct?  
16 See, I'm only dealing with motions that are pending  
17 before the Court.

18 MR. CALVO: Right.

19 THE COURT: The motion is by the government,  
20 the Attorney General, to strike appearances that have  
21 been filed on behalf of the individual defendants.

22 MR. CALVO: I understand, Your Honor, we --

23 THE COURT: So that's why I'm proceeding that  
24 way, because the Court basically has only the motion to  
25 strike and the motion for adoption of the plan before

1 it.

2 MR. CALVO: It's a little bit of an unusual  
3 situation, as I understand it, Your Honor. We filed  
4 a notice pursuant to General Rule 1.9 with the proposed  
5 order, so provided the Court deals with that, along  
6 with the motion to strike.

7 THE COURT: See, my preference in the  
8 proceeding would be that in dealing with the Attorney  
9 General's motion to strike, in effect we would be  
10 hearing your opposition to the motion, and in deciding  
11 that issue, ultimately determining whether or not there  
12 will be a substitution in the matter.

13 MR. CALVO: Thank you, Your Honor.

14 THE COURT: Does that --

15 MR. CALVO: That answers my question.

16 THE COURT: All right. Mr. Weinberg.

17 MR. WEINBERG: Thank you, Your Honor.

18 (Inaudible.)

19 THE COURT: All right, sir, I've been advised  
20 also to say that in speaking, you need to talk loudly  
21 so it could be picked up by the microphone, because  
22 we're taping the proceedings.

23 MR. WEINBERG: Your Honor, I don't know where  
24 to begin. I know this Court is already familiar with a  
25 lot of the issues having -- or the questions of law

1 that we have presented here as to who controls the  
2 representation of the Government of Guam and --

3 THE COURT: All right, before we proceed,  
4 let me ask, are you going to be calling witnesses with  
5 respect to this part of the motion?

6 MR. WEINBERG: We do have, we do anticipate  
7 that there will be testimony --

8 THE COURT: All right.

9 MR. WEINBERG: -- on these questions, because  
10 part of our argument is that the contract for the  
11 provisions of legal counsel, and Mr. Mantanona and the  
12 Calvo and Clark law firm are not legal under Guam law,  
13 so we did --

14 THE COURT: So who are these individuals that  
15 you are intending to call as witnesses?

16 MR. WEINBERG: Well, Shannon Taitano is one.  
17 We anticipated eliciting the testimony also from  
18 Lou Perez, the Director of the Department of  
19 Administration; possibly from the Governor; and  
20 possibly from Art Ilagan, the Director --

21 We were going to go through this process in  
22 testimony with them and ask them by what means these  
23 attorneys over here are sitting here purporting to  
24 represent. It's our position that (inaudible) don't  
25 have legal authority, they do not have a legal contract

1 to represent the Governor or the Director (inaudible).

2 Yes, there will be testimony.

3 THE COURT: All right. Let me ask if you  
4 could move the microphone closer to you, Mr. Weinberg.  
5 It's not picking up.

6 MR. WEINBERG: (Inaudible.)

7 THE COURT: So, do you wish to basically make  
8 arguments, or do you want to call these witnesses in  
9 for purposes of the motion, or --

10 MR. WEINBERG: However the Court would like  
11 to proceed. I don't think that additional argument is  
12 really necessary. You've read our briefs, I'm sure.  
13 So if you'd like us to proceed and put witnesses on,  
14 we --

15 THE COURT: Well, if you think it's necessary  
16 for purposes of your motion.

17 (Pause.)

18 MR. WEINBERG: There are a lot of documents,  
19 and if the parties could stipulate or -- as to the  
20 admissibility of these documents, it might expedite the  
21 matter.

22 THE COURT: What are the documents that you  
23 wish to --

24 MR. WEINBERG: These are documents produced by  
25 the, by the Governor's Office having to do with the

1 contract for Calvo and Clark and Rawlen Mantanona, and  
2 other documents related to the procurement of legal  
3 services.

4 THE COURT: Let me ask counsel. Could there  
5 be a stipulation that these documents purport to be  
6 what they are?

7 MR. CALVO: Well, Your Honor, that's -- it's  
8 possible. The problem is that we received documents  
9 last night as we were preparing for today's hearing.  
10 We have not had, as we expressed to the AG's office  
11 prior to the hearing, have not had an opportunity to go  
12 through those documents.

13 It might be possible to be able to go through  
14 the documents to review whether or not -- to review the  
15 documents to determine whether or not testimony is  
16 necessary, in the view of the Attorney General's  
17 Office. From our perspective, I don't think any  
18 testimony is necessary, but we're prepared to go  
19 forward with argument on the propriety of our contract  
20 in representing the Governor. But if it pleases the  
21 Court, we will --

22 THE COURT: Well, I'm only asking Mr. Weinberg  
23 because I want him to be able to produce to the court  
24 whatever evidence, whatever information you think may  
25 be necessary for purposes of your motion to strike.

1           Let's start with the witnesses; you said you  
2           wanted to call the Governor to the stand?

3           MR. WEINBERG:   (No audible response.)

4           (Pause.)

5           MR. CALVO:   Your Honor?

6           THE COURT:   Yes, Mr. Calvo.

7           MR. CALVO:   May I suggest that we confer with  
8           the AG's office regarding this, because depending on  
9           where they're going to go with this, there may be  
10          additional evidence that we may want to put into the  
11          record also with respect to their proceeding with the  
12          evidentiary part of the argument.

13          I'm not sure we could work anything out, it's  
14          just that we haven't had the opportunity to try, to  
15          perhaps expedite this process, and really --

16          THE COURT:   That's basically what I wanted to  
17          say is if you intend to call the Governor, what are you  
18          going to ask the Governor, and to see whether the  
19          information could be stipulated by counsel.

20          MR. WEINBERG:   We intend to ask the Governor  
21          by what means he has hired Calvo and Clark and by what  
22          means he has purported to amend the contract with Calvo  
23          and Clark; by what means Mr. Rawlen Mantanona has been  
24          hired to represent the Director of RevTax and the  
25          Director of Administration in this lawsuit.  It's our,

1 part of our contentions here is that these attorneys  
2 here are purporting to represent Government of Guam  
3 officials and provide legal services in violation of  
4 Guam law. And if that's the case --

5 THE COURT: All right. But that's a legal  
6 argument, though, that the Court can hear without  
7 actually eliciting the testimony -- the basis. I mean,  
8 the documents here would appear to supply the Court  
9 with the information that's needed to arrive at the  
10 conclusion as to why they're here before the Court  
11 today.

12 MR. WEINBERG: I think the only -- the  
13 documents that we're looking at have to do with the  
14 contracts that have been produced by the Governor's  
15 Office.

16 THE COURT: And as to those contracts, I don't  
17 think there's -- nobody is denying that they represent  
18 what they represent to be?

19 MR. CALVO: That's correct, Your Honor.

20 THE COURT: All right.

21 MR. CALVO: At least that's documents that we  
22 have.

23 THE COURT: Your retained contract?

24 MR. CALVO: Yes.

25 MR. WEINBERG: Now, on this limited issue of



1 the legal services by a private law firm, there is also  
2 another question that we want to ask of the Governor,  
3 because it's our understanding that at least with  
4 respect to Mr. Mantanona, he was hired under some --  
5 something the Governor has called an emergency  
6 procurement, and we'd like to ask the Governor about  
7 what the nature of the emergency was under Guam law  
8 that he hired Mr. Mantanona without consultation or the  
9 agreement of the Attorney General.

10 THE COURT: Well, my reading of that appeared  
11 that that memorandum came from Ms. Taitano.

12 MR. WEINBERG: Well, I --

13 THE COURT: Maybe she may be the person that  
14 you need to ask.

15 MR. WEINBERG: I can get that from Ms.  
16 Taitano.

17 THE COURT: Okay. Any other information from  
18 the Governor?

19 MR. WEINBERG: Not on this question having to  
20 do with the Attorney General, with the Attorney General  
21 representing all the respondents.

22 THE COURT: Okay. The next witness then.

23 MR. WEINBERG: Do we have anybody else other  
24 than --

25 MR. COHEN: Yes.

1 (Pause.)

2 MR. WEINBERG: Lou Perez and Art Ilagan would  
3 also be asked to testify as to their requests to the  
4 Governor for legal services outside the office of the  
5 Attorney General.

6 THE COURT: All right. Could that also be  
7 answered by Ms. Taitano who issued the, I guess the  
8 emergency --

9 MR. WEINBERG: I don't believe so, Your Honor.  
10 They may have asked Ms. Taitano to do that, to do that  
11 for her, but I think since they're here, it would be  
12 advisable to ask them directly what (inaudible).

13 MR. CALVO: Again, Your Honor --

14 THE COURT: Okay.

15 MR. CALVO: Again, this is something that  
16 might be able to be resolved through a stipulation  
17 after we confer, if we really are able to get to what  
18 Mr. Weinberg is trying to get to. And quite frankly,  
19 at this point I'm not really sure, Your Honor. But  
20 maybe we can confer about that.

21 THE COURT: All right. Do you wish some time  
22 then to talk together off the record?

23 MR. CALVO: Right, maybe a 10-minute, 15-  
24 minute recess, Your Honor.

25 THE COURT: Mr. Weinberg?

1 MR. WEINBERG: No objection.

2 THE COURT: All right, let's take a 15-minute  
3 recess, and hopefully the issue regarding testimony  
4 today can be resolved so that we can move forward from  
5 there.

6 MR. CALVO: Your Honor?

7 THE COURT: Yes.

8 MR. CALVO: Prior to the recess, I just would  
9 like to comment that, as you can see, we have a full  
10 courtroom of government officials. I'm really happy  
11 that the court is going through this process to try and  
12 find out, you know, what the Attorney General is trying  
13 to accomplish here, so that we can get an idea as to  
14 how long these very busy people have to be in the  
15 courtroom or really, you know, not get back to what  
16 they should be doing, which is, you know, working.

17 THE COURT: Have they be subpoenaed?

18 MR. CALVO: Yes.

19 THE COURT: All right.

20 MR. WEINBERG: (Inaudible) is subpoenaed.

21 And to answer the question, what I'm trying --  
22 what the Attorney General's Office would like to do is  
23 empty the courtroom, and we can do that as soon as the  
24 Court rules that these gentlemen over here do not  
25 represent the respondents, and that we do, and then

1 we'll be able to (inaudible).

2 THE COURT: All right, let's take a 15-minute  
3 recess, let me allow counsel to see whether they can  
4 resolve this issue. If not, then we'll be back and  
5 we'll continue with the arguments before the Court  
6 today.

7 MR. CALVO: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 (Recess was taken at 10:55 a.m.)

10 (Proceedings resumed at 11:16 a.m.)

11 THE COURT: Counsel, are we ready to proceed?  
12 Mr. Weinberg?

13 MR. CALVO: Your Honor?

14 THE COURT: Mr. Calvo.

15 MR. CALVO: If I may, just a housekeeping  
16 matter. I was told by my partner here that perhaps the  
17 Court had decided with respect to the witnesses in the  
18 courtroom, and as far as their availability, and when  
19 they might be needed?

20 THE COURT: Yes. Well, you know, if they're  
21 not needed for the motion to strike, I was inclined to  
22 release them at the moment.

23 MR. CALVO: Until further notice, Your Honor?

24 THE COURT: Until further notice from the  
25 court.

1 MR. CALVO: Thank you, Your Honor.

2 MR. PHILLIPS: Your Honor, if I may?

3 THE COURT: Yes, Mr. Phillips.

4 MR. PHILLIPS: We, just to the Attorney  
5 General, the possibility of releasing certain witnesses  
6 subject to a 30-minute call by the Court. That's my  
7 understanding of the agreement, and if that's the  
8 agreement I have no objection. Otherwise, Your Honor,  
9 I think it's very important that the witnesses stay  
10 because of the fact that they will be needed.

11 THE COURT: When we come -- when we address  
12 your issues?

13 MR. PHILLIPS: That's correct, Your Honor.  
14 I have no objection to them leaving as long as they're  
15 subject to call within 30 minutes.

16 UNKNOWN VOICE: With that understanding, Your  
17 Honor.

18 MR. WEINBERG: And, Your Honor, because I'll  
19 be addressing Mr. Phillips's motion, I just would like  
20 at least to note for the record that we think it's  
21 irrelevant to have testimony on that. We'd like to be  
22 able to address the Court on that issue at that time.

23 THE COURT: All right.

24 MR. WEINBERG: The Attorney General subpoenaed  
25 these witnesses (inaudible).

1 THE COURT: I see. Well, let me release the  
2 witnesses, let me release the Governor.

3 Sir, thank you for your patience sitting and  
4 waiting; the Court will release you at this time  
5 subject to recall based on what has been represented to  
6 the court.

7 (Pause.)

8 THE COURT: Any other matters before we  
9 proceed with argument? Or -- well, Mr. Weinberg.

10 MR. WEINBERG: No, Your Honor, I think we are  
11 ready to call our first witness on the question of the  
12 propriety of the counsel's contract to represent the  
13 others.

14 THE COURT: All right, you may call your first  
15 witness then.

16 MR. WEINBERG: Art Ilagan.

17 THE COURT: Mr. Ilagan.

18 THE CLERK: Please raise your right hand.

19 **ARTEMIO B. ILAGAN,**  
20 called as a witness on behalf of the Attorney General,  
21 was first duly sworn and testified as follows:

22 THE CLERK: Please state your full name and  
23 spell your last name for the record.

24 THE WITNESS: My full name is Artemio B.  
25 Ilagan, I-L-A-G-A-N.

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

**DIRECT EXAMINATION**

BY MR. WEINBERG:

Q. Mr. Ilagan, I'm Rob Weinberg for the Attorney General's Office.

You were an original signatory to the settlement agreement, were you not?

A. Yes, sir.

Q. And this is in June of last year?

A. Yes, sir.

Q. Did you have an opportunity to talk to anybody at the Attorney General's Office about that agreement?

A. Prior to signing?

Q. Have you spoken to anyone prior to, to signing it, yes.

MR. CALVO: Objection, Your Honor. My understanding on the proffer by the Attorney General's Office at this preliminary stage is that they were going to strictly delve into the procurement issue and not the other matters that are going to be before the Court later on, I imagine, this afternoon.

THE COURT: Mr. Weinberg, is that a preliminary question?

MR. WEINBERG: Well, Your Honor, I think it goes to the issue of why Mr. Ilagan has requested independent counsel. At one point he was satisfied

1 with counsel's -- with representation from the Attorney  
2 General's Office and at some point later he was not,  
3 and I'm just trying to get to, to find out at what  
4 point he changed his mind about the Attorney General's  
5 Office representing him.

6 THE COURT: Why don't we cut into the chase  
7 and ask the question directly?

8 MR. WEINBERG: Well, let me ask you that  
9 question directly, Mr. Ilagan.

10 Q. At what point did you decide that you did not  
11 want to be represented by the Attorney General?

12 A. When you look at the, the circumstances of the  
13 settlement, it was really settled too fast. We were  
14 called Friday night; John, my deputy was called Friday  
15 night, we met Saturday, we suggested ways to implement  
16 a plan that the Lieutenant Governor who was Governor at  
17 that time wanted to happen that weekend, it was too  
18 short --

19 Q. Let me slow you down. When you say we met on  
20 a Saturday, who is we?

21 A. The deputy, John Camacho, myself, and Paul  
22 Pablo.

23 Q. Paul who?

24 A. Paul Pablo.

25 Q. And who is he?



1 A. He's the Tax Enforcement Administrator.

2 Q. And where did you meet?

3 A. In my office.

4 Q. Was anyone else present?

5 A. Joe Rios was there, but he just came in from  
6 the states, his father was dying, so he really didn't  
7 participate, he went home.

8 Q. And so back in, this was -- this is in what,  
9 June the 13th, or the --

10 A. This is Saturday night.

11 Q. Saturday night in June?

12 A. Right.

13 Q. Of 2004?

14 A. Right.

15 Q. And at that point there, did you -- were you  
16 dissatisfied with the Attorney General's  
17 representation?

18 A. Uhm, we never met.

19 Q. When you signed the settlement agreement where  
20 were you; who was present?

21 A. Uhm, in the conference room, it was John,  
22 myself, Paul Pablo, Joey Manibusan --

23 Q. And for the record, who is Joey Manibusan?

24 A. He's the deputy director for Department of  
25 Administration.

1 Q. Anyone else present?

2 A. The media was there.

3 Q. I'm sorry?

4 A. The media was there, the Lieutenant Governor  
5 was there, the AG was there, uhm, Mr. Mike Phillips was  
6 there.

7 Q. And what reservations did you have about the  
8 settlement agreement at that time?

9 A. We didn't really review it, it was just given  
10 to us that day to, to look at.

11 Actually they gave it to us a few minutes  
12 before the signature, and then they pulled it back;  
13 and then when it was ready for signature they gave it  
14 back to us to sign.

15 Q. Since you've signed it, have you had an  
16 opportunity to review the settlement agreement?

17 A. Yes.

18 Q. All right. And since that time, what if any  
19 objections or reservations do you have about that  
20 settlement agreement?

21 A. There's a lot of things in there that I didn't  
22 see that we can -- that I felt was not fair. One thing  
23 was -- let's see -- allowing only taxpayers who have  
24 filed a return to claim EIC; other taxpayers who have  
25 not filed because they didn't need to, and we weren't

1 paying EIC at that time didn't have to file, so that  
2 the settlement excluded them from filing or claiming  
3 EIC.

4 MR. CALVO: Again, Your Honor, I'd have to  
5 object. I think this is entirely inappropriate.

6 THE COURT: I'm going to sustain the  
7 objection, because it sort of much goes into Mr.  
8 Phillips's area.

9 MR. WEINBERG: And, Your Honor, I don't want  
10 to do that either, I want to get to the next question.

11 THE COURT: All right.

12 MR. WEINBERG: Which is --

13 Q. At what point did you communicate your  
14 objections or reservations to the Attorney General  
15 or --

16 MR. MANTANONA: (Overlapping.) Objection,  
17 Your Honor. As counsel for Mr. Ilagan, I'm going to  
18 object, because this is not the matter before the  
19 Court. The matter is the, I guess the procurement  
20 issue in regards to Mr. Ilagan soliciting my services,  
21 so I, I'd ask the Court to get control of this matter  
22 back, and bring it back into the actual issue before  
23 the Court. Because there are thousands of issues which  
24 are going to be addressed, and the Court wants to deal  
25 with each issue specifically. So if the Court could

1 direct the Attorney General to bring it back to the  
2 solicitation.

3 MR. WEINBERG: Let me see if I can get around  
4 -- if I can get to Mr. Mantonona's objection by another  
5 way.

6 Q. At what point did you make the determination  
7 that you wanted to hire someone other than the Attorney  
8 General's Office?

9 A. When we were getting notices from the AG's  
10 Office that we had to implement the agreement.

11 Q. And when was that?

12 A. I can't recall what, what day that was.

13 Q. Approximately, was it in September?

14 A. It was last year. I can't recall. All I know  
15 is that we were getting notices, that, hey, are you  
16 guys putting money into this fund? Are you setting up  
17 the programs, are you advertising in the paper?

18 Q. And what was your response; were you doing  
19 those things?

20 A. Uhm, we did one, and then I realized that  
21 there's no appropriation for these things, and it's  
22 illegal to do these things.

23 Q. So at what point did you raise that problem  
24 with the Attorney General?

25 A. The Attorney General never came --

1 MR. CALVO: (Overlapping) Your Honor, I'm  
2 sorry. I object, Your Honor. The Attorney General's  
3 either the attorney for Mr. Ilagan or the former  
4 attorney of Mr. Ilagan, and he's cross -- he's  
5 examining him on possibly attorney-client privileged  
6 information. And this is just entirely inappropriate.  
7 I think that the proffer by the Attorney General's  
8 Office at the outset that he was going to be concerned  
9 with procurement issues, really what he said was the  
10 emergency, and what he's going through right now, Your  
11 Honor, is really the process of the settlement and the  
12 litigation and the implementation of the settlement  
13 agreement, which is entirely inappropriate, Your Honor.

14 MR. WEINBERG: Well, I'm trying to get to the  
15 question of what's the emergency. So let me ask you  
16 that question, Mr. Ilagan.

17 Q. You have filed -- you have signed a  
18 declaration stating that there was an emergency; is  
19 that not correct?

20 A. Yes.

21 Q. Let me ask you to look in the notebook that  
22 should be sitting in front of you.

23 I'm going to try this thing here.

24 MR. MANTANONA: Your Honor, at this point  
25 I'm going to object to any further questioning of

1 Mr. Ilagan by the Attorney General's Office, unless  
2 the Attorney General's Office is going to withdraw  
3 from representation of Mr. Ilagan in this case. He  
4 is putting matters before the Court that --

5 THE COURT: Overruled. I think the issue  
6 is properly before the Court because he's still the  
7 attorney, and there's also an entry of appearance that  
8 appears to contradict that representation. I'm going  
9 to overrule it for the present time and allow the  
10 question to be asked.

11 MR. WEINBERG: (Using the display machine.)  
12 For the technically illiterate here --

13 Q. Mr. Ilagan, can you read that, can you see  
14 that?

15 A. It's kind of blurry.

16 MR. WEINBERG: Could I get some assistance?

17 MR. CALVO: It's not legible from here.

18 THE COURT: All right. Counsel, why don't you  
19 just direct the witness to the exhibit in the binder so  
20 we can look at it.

21 BY MR. WEINBERG:

22 Q. Mr. Ilagan, if you would, in the binder in  
23 front of you at the tab marked HH there's a number of  
24 pages of documents, one, two -- the seventh page of tab  
25 HH, do you have it?

1 A. Yes, sir.

2 Q. Is that a document at the top of it says  
3 Certificate of Emergency?

4 A. Yes.

5 Q. For procurement of legal services?

6 A. Yes, sir.

7 Q. All right. And that is a document that you  
8 signed; is that correct? And it's dated -- what's the  
9 date on that?

10 A. (Inaudible.)

11 Q. I'm sorry?

12 A. November 15, 2004.

13 Q. November 15, 2004.

14 So from June 14th, of 2004, until November  
15 15th, was there -- was there not an emergency with  
16 respect to the Attorney General's representation of  
17 you?

18 A. Can you repeat the question?

19 Q. Yeah, that was poorly phrased.

20 November 15th, which is four months after you  
21 signed the settlement agreement, you signed a document  
22 declaring that you had an emergency on your hands; is  
23 that correct?

24 A. Yes.

25 Q. All right. So November 15th, that or

1 thereabouts is when you decided there was an emergency  
2 in the provision of legal services to you?

3 A. Yes.

4 Q. Where in, if you know, is -- why did you sign  
5 this Certificate of Emergency? Is there a reason you  
6 did that, a legal reason, or a reason under Guam  
7 regulations that you did that?

8 A. I signed it based on what I wrote on this  
9 agreement, I needed representation. I'd been asking  
10 for representation for a tax attorney in the past.

11 Q. And in fact you were being represented by  
12 Mr. Steve Cohen of the Attorney General's Office?

13 A. It's kind of weird that Steve would represent  
14 me when he wrote the ruling not to pay the EIC in the  
15 last administration, just a very big conflict there.

16 Q. So, was that -- did you ask the Attorney  
17 General for someone other than Mr. Cohen then?

18 A. No, I didn't.

19 Q. What else did you --

20 MR. MANTANONA: Your Honor, I'm going to  
21 object to this line of questioning again because, Your  
22 Honor, before the Court are the moving papers of the  
23 people in this matter's motion of respondents and  
24 Attorney General to strike the entry of appearance  
25 of Attorney Rawlen Mantanona, page 8, the entry of



1 appearance and the -- violates Guam procurement law,  
2 all it states, Your Honor, is basically that the  
3 Attorney General having -- has not approved of any  
4 representation, and it seems that this goes way beyond  
5 the scope, and actually delves into privileged  
6 information.

7 THE COURT: Well, pursuant to the question of  
8 violation of the procurement law, if the procurement  
9 law requires that you get the services, you know, you  
10 bid it out, then to circumvent that, you have to go  
11 through some emergency procedures not to follow what's  
12 provided therein --

13 MR. BENJAMIN: Your Honor?

14 THE COURT: Which is what the -- which is  
15 what they've done in this matter.

16 MR. BENJAMIN: Your Honor, if I could address  
17 the Court. The issue, however, that Mr. Weinberg and  
18 Mr. Cohen's brief does not raise the issue of whether  
19 or not the proper procedures were followed as to  
20 emergency procurement, it only raises the issue of  
21 whether or not the Attorney General's signature appears  
22 on the contract. So any questions regarding whether or  
23 not the emergency procurement was correct, there's no  
24 warning at all to counsel that they intended to raise  
25 this issue.

1 MR. WEINBERG: Your Honor, if I can address  
2 that. Our brief talks about the failure to obtain  
3 the Attorney General's signature, yes, all right.  
4 And our question is, by what authority under the  
5 procurement law was Mr. Mantanona hired for Mr. Ilagan  
6 and Ms. Perez.

7 THE COURT: All right, just for purposes of  
8 moving this forward, really, his declaration speaks for  
9 itself. The emergency that he says is present is  
10 stated in the certificate, so I think it stands for --

11 MR. WEINBERG: That's what I want to ask him  
12 about because, because it's our contention that that is  
13 not an emergency within the meaning of the emergency.

14 THE COURT: All right, then you don't need to  
15 ask him. That's an argument that you can make to the  
16 court.

17 MR. MANTANONA: Thank you, Your Honor.

18 THE COURT: Whether or not he thinks it's an  
19 emergency, but whether or not it's an emergency that  
20 legally suffices is something for the Court to decide.

21 MR. WEINBERG: Thank you, Your Honor.

22 Q. Mr. Ilagan, did you prepare this Certificate  
23 of Emergency that you signed?

24 A. It was done with other people involved.

25 Q. And just in your own words one time, what was

1 the nature of the emergency on November 15th when you  
2 signed this?

3 MR. MANTANONA: Objection, Your Honor; it  
4 calls for privilege.

5 THE COURT: Well, I'm going to sustain the  
6 objection because it's, as the Court has stated, the  
7 emergency is stated in the certificate.

8 MR. WEINBERG: Your Honor, if I can have a  
9 moment.

10 THE COURT: All right.

11 (Pause.)

12 BY MR. WEINBERG:

13 Q. Mr. Ilagan, have you ever, other than  
14 Mr. Mantanona, have you ever retained an attorney in  
15 your capacity as -- at RevTax?

16 A. Yes, I have.

17 MR. MANTANONA: (Overlapping.) Objection,  
18 Your Honor; irrelevant.

19 MR. WEINBERG: Under this emergency  
20 procurement process?

21 MR. MANTANONA: Objection, Your Honor,  
22 irrelevant.

23 THE COURT: Mr. Weinberg, relevancy?

24 MR. WEINBERG: Well, Your Honor, this is a  
25 wholly unheard of --

1 THE COURT: I mean, it's a really broad  
2 question. He could have retained an attorney in his  
3 private capacity.

4 MR. WEINBERG: I'm sorry, Your Honor, I  
5 thought I was clear. I meant in his capacity as RevTax  
6 Director, has he ever done this kind of thing before.

7 MR. MANTANONA: (Overlapping.) Objection,  
8 Your Honor; I'm going to renew the objection.

9 MR. WEINBERG: Certificate to obtain a lawyer  
10 outside the Attorney General's Office.

11 MR. MANTANONA: Objection, Your Honor. It's  
12 still irrelevant as to the actual matter of the  
13 procurement of -- it isn't relevant to this  
14 procurement.

15 THE COURT: Relevancy? Why would something  
16 prior be relevant as opposed to the current  
17 certificate?

18 MR. WEINBERG: Sir, I guess the Court has a  
19 point. It's either legal or it's not. Whether he's  
20 done it in the past or he's done it again, it's either  
21 legal or it's not, so I'll withdraw the question.

22 THE COURT: Well, what he's done in the past  
23 may be perfectly legal.

24 MR. WEINBERG: I'm sorry, Your Honor?

25 THE COURT: What he's done in the past could

1 be perfectly legal.

2 MR. WEINBERG: It could have been legal at the  
3 time.

4 THE COURT: Right.

5 MR. WEINBERG: And so --

6 THE COURT: So it would have no relevancy  
7 then.

8 MR. WEINBERG: Yes. Right.

9 Q. Did you seek to obtain the Attorney General's  
10 signature on the contract with Mr. Mantanona once he  
11 was selected?

12 A. (No audible response.)

13 MR. MANTANONA: Objection, Your Honor; calls  
14 for privileged information.

15 THE COURT: Overruled.

16 THE WITNESS: Can you repeat the question,  
17 sir?

18 BY MR. WEINBERG:

19 Q. You're aware that under Guam law the Attorney  
20 General's signature is required on all contracts;  
21 right?

22 A. Yes.

23 Q. And you're aware that under Guam law the  
24 Attorney General's signature is required on all legal  
25 -- or contracts for the provision of legal counsel as

1 well; is that correct?

2 MR. MANTANONA: Objection, Your Honor; calls  
3 for legal conclusion.

4 MR. WEINBERG: I'm only asking him if he  
5 knows.

6 THE COURT: All right.

7 A. I don't know for certain, but it may.

8 BY MR. WEINBERG:

9 Q. Did you attempt to obtain the Attorney  
10 General's signature on the contract you signed with  
11 Mr. Rawlen Mantanona for legal services?

12 A. There are certain things that are -- that I  
13 have to understand, one of them is the emergency  
14 procurement; does that go through the AG when that is  
15 procured? That's the way we were proceeding -- I was  
16 proceeding is an emergency procurement.

17 Q. On whose direction were you proceeding as to  
18 this emergency procurement procedure?

19 A. If, if we look at the case, there's a lot  
20 of conflicts that the AG has imposed on Rev and Tax.  
21 They want certain things done their way and not the  
22 best interests of the department; that's why I felt  
23 we needed somebody else to come in and say this is  
24 what you have to do.

25 Q. Now this, you brought something up I want to

1 ask you about. You just made the statement that --  
2 that the Attorney General wants to do it his way and  
3 not in the best interests of the department.

4 A. Well, you know, they agreed to the settlement  
5 without meeting with Rev and Tax. I didn't meet with  
6 any of the AG until that Saturday, or the Sunday when  
7 we're going to sign.

8 Q. Did you meet with the Lieutenant Governor?

9 A. No.

10 Q. Did any other people in your office meet and  
11 discuss --

12 MR. MANTANONA: Objection, Your Honor. Again,  
13 it goes away from the actual issues before the Court,  
14 this motion as to the procurement.

15 THE COURT: I'll sustain it for purposes of  
16 this.

17 MR. WEINBERG: (Overlapping.) Your Honor, I  
18 don't want to get into that, it's just that he keeps  
19 bringing that up as the conflict, as what the basis of  
20 his -- and I'm trying to understand the nature of the  
21 conflict.

22 Q. Let's get back to the earlier question. You  
23 did not personally or direct anyone to obtain the  
24 Attorney General's signature on Rawlen Mantanona's  
25 contract, did you?

1           A.     This was an emergency procurement; does that  
2     require the AG's signature?

3           Q.     I'm sorry, are you asking me a question?

4           A.     See, I don't know the law. You're asking me  
5     if I know the law, I'm trying to tell you what I know.

6           MR. MANTANONA:   Objection, Your Honor;  
7     argumentative.

8           MR. WEINBERG:   (Overlapping/unintelligible).

9           THE COURT:   Sir, do you want the witness to  
10    answer a yes or no or not?

11          MR. WEINBERG:   Your Honor, I apologize.

12          MR. MANTANONA:   Your Honor, I'm going to  
13    object to any leading questions on behalf of  
14    Mr. Weinberg to his alleged client Mr. Ilagan in this  
15    matter.

16          THE COURT:   Well, I'm going to overrule that  
17    objection. The matters before the Court seem to be  
18    hostile enough to allow leading questions to be asked.  
19    BY MR. WEINBERG:

20          Q.     My question is whether you did or did not  
21    attempt to get the Attorney General's signature.  
22    Now I will represent to you that the law is -- requires  
23    that. But my question is, whether it requires that or  
24    not, did you on the contract you signed with Mr.  
25    Mantanona attempt to get the Attorney General's



1 signature? Is his signature on that contract?

2 A. No, it's not.

3 Q. Why is the Attorney General's signature not on  
4 that contract, to the extent you know? I'm not asking  
5 you to speculate about the Attorney General.

6 A. (No audible response.)

7 THE COURT: I think he's answered that  
8 already, Mr. Weinberg. He said that because he thought  
9 it was an emergency they didn't need to go through that  
10 procedure.

11 BY MR. WEINBERG:

12 Q. Is that your understanding? Your under-  
13 standing is that the emergency procurement process  
14 does not require going through the Attorney General  
15 for the legal contract?

16 A. Yes.

17 Q. Who -- where did you learn, get that  
18 understanding?

19 A. Well, I think it's common knowledge; everybody  
20 probably knows that, who works for the government.

21 Q. Can you explain the emergency procurement  
22 process to me?

23 MR. MANTANONA: Objection, Your Honor; it  
24 calls for a legal conclusion or legal opinion.

25 MR. WEINBERG: Only to the extent that he

1 knows.

2 Q. If this is -- we're talking about common  
3 knowledge now. I want to know what this emergency  
4 procurement process is because this is the first time  
5 the Attorney General's Office has ever seen an  
6 emergency procurement for the provision of legal  
7 services in order to go around the procurement laws  
8 which require in two separate sections that the  
9 Attorney General be a signatory to these contracts.  
10 But if it's common knowledge that this is done, I'd  
11 like to know how that --

12 A. Common knowledge that it's done? I don't get  
13 what you're saying.

14 Q. Maybe I misunderstand your earlier question,  
15 misunderstood it. You said it was, I believe you said  
16 that it was -- it's common knowledge that you do not  
17 need to get the Attorney General's signature in these  
18 circumstances?

19 A. It may have happened in the past, some  
20 emergency like typhoons has happened, and I've heard  
21 procurement was procured, or money was spent on  
22 emergency procurement without going through the  
23 procedures.

24 Q. Okay. All right. So you're talking about  
25 procurement generally, emergencies?

1 A. Yes.

2 Q. Like in a typhoon situation?

3 A. In emergencies.

4 Q. Do you know what conditions would authorize an  
5 emergency procurement?

6 A. I don't. I may not, I don't know.

7 Q. Well, who -- what I'm trying to understand is,  
8 who prepared these documents for you to sign?

9 A. Several people did.

10 Q. Name one.

11 MR. MANTANONA: Objection, Your Honor; calls  
12 for privileged information and information --  
13 (unintelligible).

14 MR. WEINBERG: Well, if Calvo and Clark would  
15 like to state that they did that, I'll accept their  
16 representation if they prepared it.

17 MR. MANTANONA: Your Honor, I think the record  
18 is -- reflects the delegation of authority in this  
19 matter.

20 MR. BENJAMIN: Your Honor, Calvo and Clark  
21 would like to make an objection of executive privilege  
22 because Mr. Ilagan is working with the Governor in the  
23 Governor's Office and these are entering areas of  
24 executive privilege.

25 THE COURT: Is it privilege to ask who

1 prepared his statement?

2 MR. WEINBERG: Your Honor, the executive  
3 privilege or the governmental privilege or deliberative  
4 process privilege goes to the mental processes involved  
5 in formulating a government policy. In a case like  
6 this here, with respect to the attorney-client issue,  
7 and with respect to the narrow attorney-client question  
8 here, and the narrow question of who said what to whom  
9 in the context of selection of attorneys, this  
10 privilege has been waived because, because it's been  
11 put into issue by Mr. Ilagan and Ms. Perez and Calvo  
12 -- and the Governor's Office, who have rejected the  
13 Attorney General as their lawyer. That is the issue.

14 THE COURT: Well, is it relevant who prepared  
15 the certificate?

16 MR. WEINBERG: I'm just trying to understand  
17 the basis of Mr. Ilagan's --

18 THE COURT: Well, let me sustain that  
19 objection on the basis of relevancy. Whoever prepared  
20 it really isn't relevant to the issue before the Court.

21 (Pause.)

22 BY MR. WEINBERG:

23 Q. Did you select Mr. Mantanona or were you  
24 advised that he was selected by someone else?

25 A. I selected him.

1 Q. You did?

2 A. Yes.

3 Q. And in the procurement, the emergency  
4 procurement process it requires that you have I guess  
5 three bidders or three proposals?

6 A. It does.

7 Q. Yes. And Mr. Mantanona was the low bidder?

8 A. I believe he was.

9 (Pause.)

10 MR. WEINBERG: Your Honor, I think that's all  
11 we have right now.

12 THE COURT: All right. Mr. Mantanona?

13 MR. MANTANONA: Yes, just a few questions,  
14 Your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. MANTANONA:

17 Q. Good afternoon, Mr. Ilagan.

18 I'd like to refer you to the same exhibit that  
19 the People did, I believe that is HH, the Certificate  
20 of Emergency. Do you recognize that document, sir?

21 A. Yes, I do.

22 Q. Okay. Is that a clear and accurate copy of  
23 that document?

24 A. Yes, it is.

25 Q. Okay. And did you believe the contents of

1 this document to be true when you signed this document?

2 A. Yes, I did.

3 Q. Okay. And I'd like you to review paragraph 6,  
4 and -- have you had a chance to review it?

5 A. Yes.

6 Q. And is that a correct statement in your  
7 opinion?

8 A. Yes, it is.

9 MR. MANTANONA: Okay. For the purposes of the  
10 court, can the witness please read paragraph 6.

11 THE COURT: Oh, I don't think it will be  
12 necessary really, because the Court has read it.

13 MR. MANTANONA: Okay.

14 Q. So basically you believe that --

15 THE COURT: Well, Mr. Mantanona, I'm under the  
16 impression that the witness believes everything that he  
17 stated in the certificate.

18 MR. MANTANONA: That is correct.

19 Q. Well, let me ask you this, sir. Do you feel  
20 that you being faced with criminal charges and contempt  
21 proceedings qualified as an emergency situation?

22 A. A what situation?

23 Q. An emergency situation.

24 A. Yes, I believe that if somebody's supposed to  
25 represent me brings charges to me, I can't -- there's a

1 conflict there.

2 Q. And you believe that the Attorney General's  
3 Office put you in that position?

4 A. Yes, they did.

5 Q. And you believe that because of that you'd  
6 need separate counsel?

7 A. Yes, I do.

8 MR. MANTANONA: Okay. No further questions,  
9 Your Honor.

10 THE COURT: Mr. Weinberg.

11 **REDIRECT EXAMINATION**

12 BY MR. WEINBERG:

13 Q. Just to follow up on Mr. Mantanona. Paragraph  
14 6 of your certificate says that because of the  
15 attorney -- "Because the Attorney General is acting on  
16 our behalf without consultation and consent he has  
17 exposed us to contempt proceedings." Tell us about  
18 that.

19 A. Well, you know, there's supposed to be a  
20 certain amount put aside, which we can't afford.  
21 They were questioning if we're putting money aside,  
22 they were questioning if we were advertising, putting  
23 -- following the settlement agreement, and that if we  
24 weren't there's charges that may be --

25 Q. Essentially, the Attorney General's Office

1 was questioning whether you were complying with the  
2 agreement that you signed, wasn't he?

3 A. That's not the way I interpret that. That may  
4 be your interpretation, but my interpretation is he  
5 wants us to do this.

6 Q. Now, if the settlement agreement requires  
7 certain things to be done, moneys to be set aside, that  
8 you signed, and the other things that you mentioned,  
9 and if you failed to do those things, is not -- and I'm  
10 not asking for a legal conclusion -- but is not the  
11 possibility that you might be held in contempt or the  
12 plaintiff might seek to hold you in contempt a  
13 possibility?

14 A. (No audible response.)

15 MR. MANTANONA: Objection, Your Honor; calls  
16 for the client to speculate.

17 THE COURT: Mr. Weinberg, legal conclusion?

18 MR. WEINBERG: I'm trying to get to the nature  
19 of what it is he thinks he was threatened with, other  
20 than the obvious fact that if he's -- if he doesn't  
21 comply with the agreement and the Court order, he may  
22 be subject to contempt. I'm trying to understand the  
23 nature of what it is here that's different from that.

24 A. What I needed was counsel to represent the  
25 department, I need somebody to tell me what to do in



1 the best interests of the department, and I thought I  
2 wasn't getting that.

3 Q. And who determines what is in the best  
4 interests of the department?

5 A. The employees of the department. We -- the  
6 process of, of settlement is done within my department,  
7 not within the AG's office, not getting his approval  
8 for, for a settlement. Settlements are settled in my  
9 office, within my, my department.

10 Q. So it's your position that you do not need the  
11 Attorney General's input at all in settling cases that  
12 affect your department?

13 A. There are certain rights that are, are -- that  
14 taxpayers have that are not being represented by the  
15 Attorney General, their administrative rights to  
16 properly say yes or no to a settlement. I mean they  
17 weren't given that; they're saying you have to settle  
18 or else you deal with the AG's office.

19 Q. Now, if you are ordered to settle a case --  
20 if you are ordered by the Court to comply with the law,  
21 whatever that is, and the Attorney General signs that  
22 document for you, but you don't want to comply with the  
23 law, does that entitle you to hire your own lawyer?

24 A. (No audible response.)

25 MR. MANTANONA: Objection, Your Honor, calls

1 for, again, a legal conclusion, and for him to  
2 speculate as to these questions.

3 MR. WEINBERG: Mr. Ilagan has testified that  
4 he -- that the department gets to make its own policy  
5 decisions with respect to the settlement of legal  
6 claims. And I'm trying to understand how far that  
7 goes.

8 MR. MANTANONA: And, Your Honor, I'm going  
9 to object to that, a question that is confusing in  
10 regards to this matter. I think Mr. Ilagan is  
11 addressing a different kind of settlement, in regards  
12 to what he is speaking of, not the settlement in  
13 regards to the orders of this court. I think he's  
14 talking about a tax claim or contest or questions in  
15 regards to his taxes -- I mean about an individual's  
16 claims.

17 Thank you.

18 THE COURT: What is it directly that you want  
19 the witness to respond to?

20 MR. WEINBERG: With all these objections, I'm  
21 losing the question.

22 Q. But the question is, who gets to make the  
23 decision in settlement of lawsuits, or the defense of  
24 lawsuits, or the bringing of lawsuits?

25 MR. MANTANONA: Objection, Your Honor.

1 THE COURT: I think the witness was saying in  
2 that in terms of taxpayer disputes, he determines the  
3 settlement posture, the settlement decision. That's  
4 what I gather from his testimony.

5 BY MR. WEINBERG:

6 Q. Is that your testimony, that, that when a  
7 dispute involving the department is in court --

8 THE COURT: Well, as a taxpayer. I don't  
9 think he said in court, you know the normal taxpayer  
10 disputes with the department.

11 MR. WEINBERG: Well, I'm not talking about  
12 resolving taxpayer disputes, I'm talking about where  
13 the department through its officials are defendants in  
14 court.

15 Q. And my question is, who gets to make the  
16 decision as to what the legal decisions are in that  
17 case?

18 MR. MANTANONA: And objection, Your Honor.  
19 Again, that's going to call for a legal conclusion on  
20 my client's part. He needs to --

21 MR. WEINBERG: I just want to clarify that  
22 Mr. Ilagan says he gets to make that call because that  
23 is the question we got, we have presented here; because  
24 if that's the basis of Mr. Ilagan's objection to the  
25 Attorney General, is that he doesn't like the Attorney

1 General's position in the case, then that helps narrow  
2 the issues considerably.

3 MR. MANTANONA: Your Honor --

4 MR. WEINBERG: Mr. Ilagan has said that he  
5 was afraid he's being threatened with contempt if he  
6 complies with the court order -- or if he fails to  
7 comply with the court order. And I wanted to explore  
8 that because it sounds like he does not want to comply  
9 with the court order and the settlement agreement.

10 MR. MANTANONA: Your Honor, then I'm going to  
11 object that the Attorney General's line of questioning  
12 is an area in which he's actually going to be exposing  
13 his own client to any kind of criminal liability.

14 THE COURT: I'm going to -- what I'm going to  
15 do is sustain the objection, really. It's not a  
16 question that I think that relates to the issue on your  
17 motion to strike per se. I think we can decide that  
18 issue without getting a response from the witness on  
19 that question.

20 (Pause.)

21 MR. WEINBERG: Well, I don't want to beat that  
22 door, Your Honor, I was just trying to explore this  
23 door that Mr. Ilagan opened about these two paragraphs  
24 in the certificate about the nature of Mr. Ilagan's  
25 concerns about contempt, and now the threat of criminal

1 proceedings being held against him.

2 Q. Is that also part of why you wanted your own  
3 lawyer and declare this to be an emergency, that you  
4 feared criminal prosecution from the Attorney General's  
5 Office?

6 A. Part of it.

7 Q. Okay. What is the basis of that, that you  
8 will be criminally prosecuted by my office?

9 A. A lot of things. The media, the way the media  
10 represents certain cases before the public. The way  
11 the AG is very adversarial to the Administration.

12 Q. And are there more facts here? We've got  
13 the media and an adversarial relationship with the  
14 Administration. What else makes you think you're going  
15 to be the subject of criminal liability for what you --  
16 for complying with the court order in this case?

17 A. Uhm, a lot of times I feel I don't have the  
18 reputation -- representation I need to run the  
19 department.

20 Q. Are you speaking specifically with respect to  
21 this case or just generically that you don't have  
22 enough lawyers?

23 A. Uhm, enough lawyers who can handle what the  
24 department needs.

25 Q. Welcome to GovGuam. But, what is your concern

1 about criminal liability in this case that warranted  
2 you filing a Certificate of Emergency and hiring  
3 Mr. Mantanona? Who told you you were going to be going  
4 to jail if you comply with the settlement agreement and  
5 court order?

6 A. I don't know if -- I can't remember if I read  
7 something or, uhm, or seen something that says that I  
8 will be liable for not following what the Court has  
9 ordered based on my representation from the AG.

10 Q. Do you have any reason to think that you could  
11 go to jail because of what you have signed?

12 MR. MANTANONA: Your Honor, I'm going to  
13 object to this line of questioning again. The Attorney  
14 General is questioning, cross-examining, in fact, its  
15 own client on information in which the Attorney General  
16 himself proffers the criminality of his acts and does  
17 not give the defendant -- I mean, Mr. Ilagan any advice  
18 of what to follow or not to follow.

19 MR. WEINBERG: Your Honor, the Attorney  
20 General's Office has never threatened anyone in this  
21 case with any kind of criminal liability for failure  
22 to comply with the court order. That idea came from  
23 somewhere else, and I'm trying to identify it, because  
24 Mr. Mantanona opened this door in questioning  
25 Mr. Ilagan about paragraph 6 of his certificate, and

1 that's all I'm trying to do.

2 THE COURT: But the lack of possible criminal  
3 consequences is certainly some things here that you can  
4 argue before the Court in relation to your motion to  
5 strike. But there's no basis for it based on what the  
6 witness has testified to the court today.

7 MR. WEINBERG: Well, it's just that  
8 Mr. Mantanona was, was asking him to corroborate, in  
9 essence, what he signed and what I'm hearing is that  
10 Mr. Ilagan doesn't even know the basis of why he --

11 THE COURT: Then I think for purposes of your  
12 argument, that will be your argument to the court.

13 MR. WEINBERG: Well, if it's clear from his  
14 testimony, I have no further questions.

15 THE COURT: That's what he said.

16 MR. WEINBERG: All right, then I have nothing  
17 further then. Thank you.

18 THE COURT: Recross, Mr. Mantanona.

19 **RECROSS-EXAMINATION**

20 BY MR. MANTANONA:

21 Q. Mr. Ilagan, I'd like you to look at the book  
22 again, and look at Exhibit R.

23 A. (No audible response.)

24 Q. Have you had an opportunity to find that  
25 document, sir? Are you familiar with this document,

1 sir?

2 A. (Pause.) I believe I glanced at it before,  
3 I've read it.

4 Q. You've read this before, sir?

5 A. I mean, I can't recall. I've come across some  
6 of the issues that are, are presented in the papers.

7 Q. Can you tell the Court what this document is?

8 A. (Pause.) I believe it's the Charles  
9 Troutman's --

10 Q. Legal opinion?

11 A. Charles Troutman.

12 Q. Legal opinion?

13 A. His opinion on what can be paid and what can't  
14 be paid.

15 Q. Okay. And what's the date of this opinion,  
16 sir?

17 A. October 13th, 2004.

18 Q. Okay. Now that you've seen it, does it  
19 refresh your memory a little bit about this document?

20 A. Yes. I have to read it, I haven't read this  
21 since back then.

22 Q. Okay. Did you have an opportunity to read  
23 this document prior to hiring me?

24 A. Yes, I did.

25 Q. Okay. And in this document, isn't it correct



1 that it points out that part of the EITC, it will be  
2 the Attorney General's opinion, or Attorney Charles  
3 Troutman --

4 MR. WEINBERG: Objection; best evidence.

5 THE COURT: I'm sorry?

6 MR. WEINBERG: The document speaks for itself.

7 THE COURT: I'm sorry, I didn't hear the  
8 objection.

9 MR. WEINBERG: I said the document speaks for  
10 itself, Your Honor.

11 THE COURT: Mr. Mantanona?

12 MR. MANTANONA: Yes, Your Honor, we're just  
13 trying to -- the issue comes down as to the need for  
14 the emergency procurement, Mr. Ilagan's feelings of  
15 his representation. And Mr. Weinberg asked him about  
16 illegal acts; well, this document, Your Honor,  
17 specifies that some of the acts contained in the EITC  
18 is illegal, and Mr. Ilagan, if he complied with these  
19 terms would be criminally liable.

20 MR. WEINBERG: Well, Mr. Ilagan has yet to  
21 testify that he has a current memory of this document,  
22 whether this document influenced his decision --

23 The document speaks for itself. Do you want  
24 to offer it?

25 THE COURT: The document speaks for itself.

1 Why don't you ask the next question then.

2 BY MR. MANTANONA:

3 Q. Do you remember, after reading this document,  
4 if you felt like you wanted to get separate counsel?

5 MR. WEINBERG: Objection to leading.

6 MR. MANTANONA: Well, let me ask again.

7 Q. Mr. Ilagan, okay, after reading this document,  
8 did you have any desires to do anything?

9 A. Uhm, spending is illegal; from reading this  
10 document, any spending that is not appropriated is  
11 illegal.

12 Q. Did you want to do anything, sir, for securing  
13 of services of anybody?

14 A. After certain events that has happened, like  
15 the AG questioning why hasn't this been done, why  
16 didn't we send out these notices as required by the  
17 settlement, there was a question of who's representing  
18 the department as to is it legal or not.

19 Q. Okay, sir.

20 A. They're telling me to do it.

21 Q. Okay. They're telling you to do it. And what  
22 does this letter tell you to do?

23 A. It tells me it's illegal.

24 Q. And did the Attorney General ever come back  
25 and say don't worry about it, or give you any advice in

1        regards to this, the conflict?

2            A.     I don't remember them --

3            Q.     Thank you.

4            A.     -- coming back to me.

5            Q.     That's why you wanted your own counsel?

6            A.     Yes.

7            MR. MANTANONA:   Thank you.

8            No further questions, Your Honor.

9            THE COURT:   All right, thank you, sir, you may  
10        step down.

11            MR. WEINBERG:   Just a real quick followup on  
12        this, Your Honor.

13            THE COURT:   Well, if I keep allowing it, we're  
14        never going to get through the witness.

15            MR. WEINBERG:   Limited to the issues that  
16        Mr. Mantanona keeps opening up.   But it's one question,  
17        Your Honor.

18            Q.     Mr. Ilagan --

19            THE COURT:   Well, do you have any objection,  
20        to this question being asked?

21            MR. MANTANONA:   Your Honor?

22            THE COURT:   Do you have any objection to the  
23        question being asked?

24            MR. MANTANONA:   Your Honor, I concur with the  
25        court that further questions will go on.   Mr. Weinberg

1     stated that the best evidence, the document, is there;  
2     there's no further review (inaudible).

3             THE COURT: Well, see, we basically have  
4     direct, redirect, cross, recross, nothing further than  
5     that.

6             MR. WEINBERG: My question has to do not  
7     with the document but with what happened between the  
8     document and this one question, and when he signed,  
9     Mr. Ilagan signed the certificate. And Mr. Mantonona  
10    has asked questions about, well, now that he's seen  
11    this document he felt he needed to get his independent  
12    counsel, I'd like to just follow up on that.

13            THE COURT: All right, but I'm saying that if  
14    I allow you to ask it, and then he actually comes back  
15    and asks another question, it's never going to end.  
16    And basically we have only four stages, direct,  
17    redirect, cross and recross.

18            MR. WEINBERG: That's fine.

19            THE COURT: All right, sir, you may step down.

20            MR. WEINBERG: I'll save it for argument.

21            THE COURT: Okay. You may step down.

22            Do you want to call your next witness,  
23    Mr. Weinberg.

24            MR. COHEN: Lou Perez, Your Honor.

25            THE COURT: All right, Ms. Perez.

1 MR. COHEN: Would the Court mind if I examined  
2 the witness here at counsel table?

3 THE COURT: It doesn't matter. Let me see  
4 whether -- see, we have a problem picking up. You  
5 might try, and if it doesn't pick up, Mr. Cohen, I may  
6 have to ask you to go to the podium.

7 MR. COHEN: Can you hear me? I think so. I  
8 have a strong voice.

9 THE COURT: Very well.

10 **LOURDES M. PEREZ,**  
11 called as a witness on behalf of the Attorney General,  
12 was first duly sworn and testified as follows:

13 THE CLERK: Please state your full name and  
14 spell your last name for the record.

15 THE WITNESS: Lourdes M. Perez, P-E-R-E-Z.

16 **DIRECT EXAMINATION**

17 BY MR. COHEN:

18 Q. Yes, Ms. Perez, I thank you for appearing here  
19 today. I'm Stephen Cohen from the Attorney General's  
20 Office. And you're appearing here pursuant to a  
21 subpoena, is that correct?

22 A. That's correct.

23 Q. Okay. And what is your occupation, please,  
24 Ma'am?

25 A. I'm the Director of the Department of

1 Administration.

2 Q. And when did you become the Director of  
3 Administration?

4 A. In January of 2003.

5 Q. Okay. And you were appointed by Governor  
6 Camacho, is that correct?

7 A. That's correct.

8 Q. And who is Joseph Manibusan?

9 A. He's my deputy.

10 Q. Okay. And you are a member of the Governor's  
11 cabinet, is that correct?

12 A. That's correct.

13 Q. You serve at his pleasure?

14 A. That's correct.

15 Q. Okay. And before you became the Director of  
16 the Department of Administration, did you have any  
17 previous Government of Guam jobs?

18 MR. MANTANONA: Objection, Your Honor;  
19 irrelevant, and leading by her own counsel.

20 THE COURT: Mr. Cohen?

21 MR. COHEN: I don't think I'm leading. I'm  
22 just asking if she had some previous government jobs.

23 THE COURT: Relevancy.

24 MR. COHEN: I'm trying to establish a  
25 knowledge base, Your Honor.

1 THE COURT: Overruled for the time being.

2 MR. COHEN: Okay.

3 Q. Now, that notebook in front of you there, that  
4 thick notebook, I direct your attention to Exhibit KK.  
5 Could you please open that up? Do you have that?

6 A. K?

7 Q. Double K.

8 A. Yes.

9 Q. You found that now?

10 A. Yes, I did.

11 Q. Thank you.

12 I direct your attention to a single page  
13 document, the very top of Exhibit KK, directed to  
14 Shannon Taitano, from, it says Director of Department  
15 of Administration, and there's a signature after that;  
16 is that your signature?

17 A. Yes, sir, it is.

18 Q. Okay. And I see below that there's a line for  
19 Director of Department of Revenue and Taxation, and a  
20 signature. Do you recognize that signature?

21 MR. MANTANONA: Objection, Your Honor;  
22 irrelevant.

23 MR. COHEN: It's a joint document, I'm trying  
24 to establish the people who signed the document, Your  
25 Honor.

1 THE COURT: Overruled.

2 By MR. COHEN:

3 Q. Do you recognize the signature?

4 A. Yes, I do.

5 Q. And who is that?

6 A. Art Ilagan.

7 Q. The gentleman who just testified?

8 A. That's correct.

9 Q. Did you prepare that document?

10 A. I, I prepared it, I printed it at my office,  
11 yes.

12 Q. Okay. And it's on your letterhead?

13 A. That's my letterhead.

14 Q. Now you say you printed it at your office.  
15 Did you receive the text of that document from any  
16 other source?

17 A. Uh, yes.

18 Q. And who did you receive that text from?

19 A. I received it from, uhm, I received it from  
20 the Governor's legal counsel.

21 Q. Okay. And the text was then given to you on a  
22 floppy disk or e-mailed to you and you printed it out;  
23 how did that happen?

24 MR. MANTANONA: Objection, Your Honor;  
25 irrelevant again.



1 MR. COHEN: It's not irrelevant; it's a  
2 document she signed which has certain legal  
3 consequences, Your Honor.

4 MR. MANTANONA: Well, Your Honor, the document  
5 speaks for itself; I don't see what matter it would be  
6 relevant.

7 MR. COHEN: It speaks for itself, but the  
8 circumstances under which it was signed are critical to  
9 this case, Your Honor.

10 MR. BENJAMIN: Your Honor, on behalf of --

11 THE COURT: Let me see, what is the question,  
12 under what --

13 MR. COHEN: I asked her how she received the  
14 text of the document. She's testified she received the  
15 text of a document from a source outside of her office,  
16 and printed it out on her office, I guess on her  
17 computer; I'd like to find out, Your Honor, where she  
18 obtained the text.

19 THE COURT: Well, she did, she said from Ms.  
20 Taitano.

21 MR. COHEN: Okay.

22 Q. And what did you -- did you sign this in the  
23 presence of Mr. Ilagan?

24 A. I don't recall.

25 Q. Okay. But the language then in that document

1 is not your own language; is that correct?

2 A. That's correct.

3 Q. It came from a source outside of your office?

4 A. Yes.

5 Q. Okay. And did you sign this in your office or  
6 some place else?

7 A. I really don't recall.

8 Q. Okay. And was Mr. Ilagan present when you  
9 signed it?

10 A. (No audible response.)

11 MR. MANTANONA: Objection, Your Honor; asked  
12 and answered.

13 THE COURT: Overruled.

14 A. I don't recall.

15 MR. COHEN: You don't recall.

16 Q. Now after you signed this document, what  
17 became of it?

18 A. It, it was delivered to, uh, the Governor's  
19 legal counsel.

20 Q. So then the Governor's legal counsel asked you  
21 to sign this document, is that correct?

22 MR. BENJAMIN: Objection, Your Honor.

23 A. No, she did not.

24 MR. COHEN: She did not.

25 MR. MANTANONA: Objection, Your Honor.

1 MR. COHEN: Okay, I'll withdraw it. Excuse  
2 me.

3 THE COURT: You made an objection?

4 MR. BENJAMIN: Your Honor, the counsel wishes  
5 to inquire about the circumstances, but if counsel  
6 could be instructed to not inquire regarding  
7 circumstances involving Ms. Perez's direct  
8 communications with counsel for the Governor, because  
9 those would be privileged communications (inaudible) --

10 MR. COHEN: No, I'm not. Let me just move on,  
11 Your Honor.

12 THE COURT: Move on to the next question  
13 then.

14 MR. COHEN: Okay.

15 Q. I direct your attention to another document,  
16 the second page, dated November 15th; do you see that  
17 document?

18 A. The one on --

19 Q. The second, the second page of exhibit double  
20 K.

21 A. Yes.

22 Q. And does your signature appear on that?

23 A. Yes.

24 Q. Okay. And are the circumstances where you  
25 obtained this document the same as regarding the

1 circumstances you obtained the previous document you  
2 testified about?

3 A. Yes.

4 Q. The answer is yes?

5 A. Yes.

6 Q. Okay. Now I direct your attention to the  
7 third page of Exhibit KK entitled Certificate of  
8 Emergency for procurement of regular services; do you  
9 see that?

10 A. Yes.

11 Q. Okay. And does your signature appear on that?

12 A. Yes.

13 Q. Okay. Did you prepare this document?

14 A. (Pause.) I prepared it, I printed it.

15 Q. Okay, you printed it. But the text of this  
16 document, did it originate from yourself or from some  
17 place outside of your office?

18 A. It represents my side.

19 Q. That's not the question I asked you. The  
20 question I asked you is the text, the language of this  
21 document, was that provided to you by a source outside  
22 of your office?

23 MR. BENJAMIN: Objection, Your Honor; it's  
24 heading into an area of privilege again. Again,  
25 Ms. Taitano was acting as counsel for Ms. Perez, and

1 this is all heading towards privilege.

2 MR. COHEN: Excuse me, I haven't asked any  
3 question remotely -- Now this is a document signed by  
4 the witness; I have the right to ask her about the  
5 circumstances that she signed it, where she got the  
6 language from.

7 I also note that Mr. Benjamin is, of course,  
8 is not counsel for this witness.

9 MR. MANTANONA: Well, Your Honor, on behalf of  
10 Ms. Perez, let me object to --

11 THE COURT: Objection is overruled.

12 MR. COHEN: Okay.

13 Q. The question is overruled. You may answer my  
14 question, Ms. Perez.

15 A. Can you repeat it, sir?

16 Q. The language used in this document entitled  
17 Certificate of Emergency for procurement of services,  
18 did this language come from a source outside of your  
19 office?

20 A. Yes.

21 Q. This is not your own personal language, is it?

22 A. I don't believe so.

23 Q. And was this document presented to you for  
24 signature, is that correct?

25 A. It was presented to me.

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 Q. And who presented it to you for signature?

2 A. Uh, I don't recall.

3 Q. Okay. Now I note another signature  
4 purportedly by Mr. Artemio B. Ilagan, Director of  
5 Revenue and Tax. Do you recognize that signature?

6 A. Uh, yes.

7 Q. And is that Mr. Ilagan's signature?

8 A. It appears to be his signature.

9 Q. Okay. And did you sign this in the -- did  
10 you sign this document Certificate of Emergency for  
11 procurement of legal services in the presence of  
12 Mr. Ilagan?

13 MR. MANTANONA: Objection, Your Honor;  
14 relevance of the --

15 MR. COHEN: I'm trying to determine the source  
16 of --

17 THE COURT: I'm going to sustain the  
18 objection; it's irrelevant whether Mr. Ilagan was there  
19 at the same time, just as long as it's signed by the  
20 witness.

21 MR. COHEN: Okay.

22 Q. I notice the signature -- or I notice the  
23 signature below your signature and Mr. Ilagan's  
24 signature, which purports to be that of Felix P.  
25 Camacho, Governor of Guam; do you see that?

1 A. Yes, I do.

2 Q. Okay. Did this, did that signature appear on  
3 this document at the time you signed it?

4 A. No.

5 MR. MANTANONA: Objection, Your Honor;  
6 relevance as to anything in regards to this case, when  
7 the Governor's signature was put on this document.

8 MR. COHEN: Your Honor, that's --

9 THE COURT: She already knows that the  
10 objection is -- she said no.

11 BY MR. COHEN:

12 Q. The signature was not there at the time you  
13 signed it, right?

14 A. I kind of believe it was.

15 Q. The signature which purports to be the  
16 signature of Felix P. Camacho, Governor of Guam, that  
17 was not present at the time you signed this document;  
18 is that my understanding of your testimony?

19 MR. MANTANONA: Objection, Your Honor; asked  
20 and answered.

21 MR. COHEN: I don't recall her testimony, Your  
22 Honor.

23 MR. MANTANONA: Your Honor, my client  
24 testified that it wasn't there when she signed it.

25 MR. COHEN: All right, fine. Let's just move

1 on.

2 Q. And this Certificate of Emergency for  
3 procurement of legal services, that consists of 11  
4 points; is that correct?

5 A. Yes.

6 Q. Okay. Now at the time you signed this  
7 document, did you have any understanding as to whether  
8 or not those circumstances were true or not true?

9 A. Yes, sir.

10 Q. What was your understanding?

11 A. That they were true.

12 Q. Okay. Now, did you, did you make any  
13 independent determination from any sources, any rules,  
14 regulations or statutes regarding emergency procurement  
15 before you signed this document?

16 A. (No audible response.)

17 MR. MANTANONA: Objection; asking my client  
18 for a legal opinion.

19 MR. COHEN: I'm not, I'm asking her if she  
20 referred to any sources of legal authority, whether it  
21 be a statute or a regulation or a rule before she  
22 signed this document.

23 MR. MANTANONA: Your Honor --

24 MR. COHEN: That's all I'm asking her.

25 MR. MANTANONA: Then, Your Honor, I'm going to



1 object to that on the issue of privilege; if she was in  
2 communication with counsel at the time, then the  
3 counsel is acting as her attorney and it's privileged.

4 MR. COHEN: I didn't ask that question.

5 Q. The question I asked, I'll repeat it again,  
6 is: Ms. Perez, did you refer to any statute, rule or  
7 regulation regarding emergency procurement before you  
8 signed this exhibit Certificate of Emergency for  
9 procurement of legal services?

10 MR. MANTANONA: Your Honor, renew the  
11 objection.

12 THE COURT: All right, overruled.

13 MR. COHEN: You may answer the question.

14 A. I am aware of the steps to follow in  
15 determining or declaring that an emergency exists.

16 Q. But that's not the question I asked. The  
17 question is, before you signed this document, did you  
18 specifically refer to any statute, rule or regulation  
19 regarding emergency procurement of services?

20 A. At the time no, I did not.

21 Q. You did not, okay. Now, at the time you  
22 signed this document, Certificate of emergency for  
23 procurement of legal services, was there a typhoon at  
24 that time occurring on the island of Guam?

25 A. I believe no.

1 Q. Was there an earthquake occurring at the time,  
2 at that time on the island?

3 MR. MANTANONA: (Overlapping.) Objection, on  
4 irrelevant questioning regards --

5 MR. COHEN: It goes to what is the emergency  
6 under this particular document, Your Honor.

7 MR. MANTANONA: Then, Your Honor, counsel  
8 should ask what she feels constitutes the emergency.

9 MR. COHEN: That's not the question I'm  
10 asking. I'm asking her if there was a typhoon at the  
11 time; she said no.

12 MR. MANTANONA: Based on that, Your Honor --

13 MR. COHEN: (Overlapping) The next question  
14 I want to ask the witness is, was there an earthquake  
15 at this time.

16 MR. MANTANONA: Your Honor, we renew the  
17 objection as irrelevant.

18 MR. COHEN: Okay. May the witness answer the  
19 question, Your Honor?

20 THE COURT: I'm going to sustain that  
21 objection.

22 BY MR. COHEN:

23 Q. Was there any civil insurrection at that time?

24 A. (No audible response.)

25 MR. MANTANONA: Again, Your Honor, renew --

1 THE COURT: Sustained.

2 BY MR. COHEN:

3 Q. Was your office in operation and functioning  
4 at that time?

5 A. Yes.

6 Q. So there was nothing that caused your office  
7 to be out of commission at that time?

8 A. (No audible response.)

9 MR. MANTANONA: Objection, Your Honor;  
10 irrelevant again.

11 THE COURT: Overruled.

12 MR. COHEN: You may answer the question.

13 Q. The question was, there was nothing which  
14 would cause your office to be out of commission at that  
15 time when you signed this; is that correct?

16 A. My office had --

17 Q. Your office was not shut down?

18 A. It was not.

19 Q. For any reason, okay.

20 And you said you printed this out on your own  
21 computer; is that correct?

22 A. I believe I did.

23 Q. So your computer system was operating at the  
24 Department of Administration?

25 A. That's correct.

1 Q. Okay. Now before you signed this exhibit,  
2 Certificate of Emergency for procurement of legal  
3 services, did you discuss this with the Attorney  
4 General of Guam, Mr. Douglas Moylan?

5 A. No.

6 Q. Did you discuss it with anybody else in the  
7 Attorney General's Office?

8 A. No.

9 Q. Did you inform Mr. Moylan or anybody else in  
10 the Attorney General's Office of this document before  
11 you signed it?

12 A. I don't believe so.

13 MR. COHEN: Now, Your Honor, I'd like to offer  
14 some of these documents into evidence which have been  
15 -- these first 1, 2, 3 pages, and it's a little unclear  
16 to me as to whether any of them are part of a joint  
17 exhibit. I'm looking at the documents on the table and  
18 I don't see that, and unless I'm corrected by somebody  
19 here, by counsel, I'm going to offer the first, second,  
20 and third pages of this document as Exhibit UU.

21 MR. MANTANONA: Your Honor, I'm going to  
22 object to the admission of this document as irrelevant.  
23 There's nowhere in their brief that they actually  
24 raised this issue as whether the Attorney General's  
25 Office or the Attorney General signed this document, or

1 signed the procurement.

2 MR. COHEN: I don't understand this comment  
3 why we haven't briefed it. First the Court said --

4 THE COURT: (Overlappping.) Let me see if I  
5 understand you. You're asking that exhibit, is it HH?

6 MR. COHEN: HH, and there's a bunch of pages  
7 in here, and there's --

8 THE COURT: First, second and the third page  
9 be admitted into evidence?

10 MR. COHEN: We've had testimony of the first  
11 page, the second page and the third page so far.

12 THE COURT: All right, so that's what you're  
13 asking to be admitted at this point?

14 MR. COHEN: That I would like to offer, Your  
15 Honor.

16 THE COURT: Any objection?

17 MR. MANTANONA: Yes, Your Honor, we believe  
18 that it's irrelevant in regards to this matter. We  
19 believe that these issues weren't raised in the  
20 People's brief in this matter, and it goes to  
21 specifically actually just to the authorization of the  
22 Attorney General to my contract.

23 THE COURT: All right. Over counsel's  
24 objection, the Court will admit Exhibit HH, the first  
25 three pages into evidence.

1 MR. WEINBERG: Your Honor, point of  
2 clarification. I think you're referring to Exhibit KK.

3 MR. MANTANONA: That's correct.

4 MR. COHEN: Excuse me, I made an error.  
5 Excuse me, it's Exhibit KK.

6 THE COURT: Okay, KK.

7 MR. COHEN: Pardon me, Your Honor.

8 THE COURT: The first three pages of Exhibit  
9 KK over counsel's objection --

10 MR. COHEN: That's the first three pages.

11 THE COURT: -- are admitted into evidence.

12 BY MR. COHEN:

13 Q. Ms. Perez, I'd like you to turn to the last  
14 document in Exhibit KK, which is a multi-page document  
15 entitled Memorialization of Agreement for Professional  
16 Services between the Government of Guam and Mantanona  
17 Law Office. Do you see that?

18 A. (Pause.) Yes, I do.

19 Q. Okay. And I ask you to turn to the last page;  
20 does your signature appear on that?

21 A. Yes, sir.

22 Q. Okay. And where did you sign this document?

23 A. I'm sorry?

24 Q. Where did you sign it?

25 A. I signed it at the Governor's Office.

1 Q. Okay. Who was present at the time?

2 A. Uhm, the Governor's legal counsel.

3 Q. Okay. And that's Ms. Shannon Taitano?

4 A. That's correct.

5 Q. Okay. Did you prepare this document,  
6 Memorialization of Agreement for Professional Services  
7 between the Government of Guam and Mantanona Law  
8 Office?

9 MR. MANTANONA: Objection, Your Honor;  
10 irrelevant as to the contract's preparation in regards  
11 to this matter. It's obvious from the first letter  
12 that the delegation of the procurement was given to  
13 Ms. Taitano in this matter.

14 MR. COHEN: Her signature appears on this,  
15 Your Honor; it's quite proper to ask her if she  
16 prepared the document she signed.

17 THE COURT: Well, that would assume that she's  
18 an attorney.

19 MR. MANTANONA: Correct, Your Honor.

20 MR. COHEN: Excuse me?

21 THE COURT: That would assume that she's an  
22 attorney if she's -- you've asked her whether she  
23 prepared the document.

24 MR. COHEN: I just asked the witness if she  
25 personally prepared it. That was my question. Perhaps

1 I should rephrase that.

2 MR. MANTANONA: Your Honor, again, I'm going  
3 to object.

4 THE COURT: Well, maybe you should rephrase  
5 the question.

6 BY MR. COHEN:

7 Q. Was this document prepared by someone other  
8 than yourself?

9 A. Yes, it was.

10 Q. Okay. And who was it prepared by?

11 A. I can't -- I, I assume it was Ms. Taitano.

12 Q. You don't know for a fact though?

13 A. I don't.

14 Q. And that is your signature which appears?

15 A. Yes.

16 Q. Now, I direct your attention to another  
17 signature on that last page, under the signature block  
18 for Artemio Ilagan, Director of Department of Revenue  
19 and Taxation, do you recognize that signature?

20 A. Yes, I do.

21 Q. And that is Mr. Ilagan's signature?

22 A. I believe it is.

23 MR. COHEN: Okay. Your Honor, I'd offer this  
24 document, Memorialization Of Agreement For Professional  
25 Services between the Government of Guam and Mantanona



1 Law Office also as part of exhibit double H, Your  
2 Honor.

3 MR. MANTANONA: Your Honor, can I examine the  
4 document before the Court admits it?

5 MR. COHEN: Yeah, the document is in your  
6 notebook.

7 MR. MANTANONA: I want to make sure this is  
8 the final or the latest version of this document.

9 MR. COHEN: Your Honor, as I mentioned before,  
10 during the recess we sought to stipulate as to  
11 documents to aid -- to ease in their admission, and I,  
12 for the life of me, cannot find in my counsel table  
13 here this particular document.

14 (Pause.)

15 MR. COHEN: Okay, I stand corrected, Your  
16 Honor. I do have a document here, apparently it's  
17 Joint Exhibit 16 of the parties. And that's not in  
18 this notebook. I think the witness obviously should  
19 review this.

20 I'll try to use this overhead projector, I'm  
21 not sure how successful I'll be.

22 THE COURT: Is there a stipulation to its  
23 admissibility?

24 MR. MANTANONA: Your Honor, I'm still waiting  
25 to review the document.

1 MR. WEINBERG: It's your contract (inaudible).

2 MR. MANTANONA: I understand that, but I want  
3 to see the later version, because the versions were  
4 going back and forth.

5 Thank you.

6 (Pause.)

7 MR. MANTANONA: Your Honor, as long as it's  
8 being brought in under this exhibit number, and this is  
9 the version it's coming in, I have no objection.

10 THE COURT: All right, Joint Exhibit 16 then  
11 is admitted into evidence without objection.

12 (Pause.)

13 BY MR. COHEN:

14 Q. And you signed the document November 19th,  
15 2004, is that correct?

16 A. Yes.

17 Q. And Mr. Ilagan signed it November 19th, 2004?

18 A. Uhm, I believe he did.

19 Q. Okay.

20 MR. COHEN: Okay. I have no further questions  
21 of the witness at this time, Your Honor.

22 THE COURT: Mr. Mantanona?

23 MR. MANTANONA: Just a few, few questions,  
24 Your Honor.

25 ///

**CROSS-EXAMINATION**

BY MR. MANTANONA:

Q. Good afternoon, Ms. Perez.

A. Good afternoon.

Q. Just a few questions. Go back to the KK, I believe the third page, what is this document, Ma'am?

A. Certificate of Emergency.

Q. And did you have an opportunity to review this document before you signed it?

A. Yes, I did.

Q. Did you actually participate in the drafting of this document?

A. Not the actual language, but in terms of the points raised here.

Q. And who prepared that document for you?

A. I believe it was Shannon Taitano.

Q. Ms. Taitano was an attorney -- is an attorney?

A. That's right.

Q. And so these statements, these 11 paragraphs reflect your feelings?

A. Yes.

Q. Okay. And based upon this, you believed that you needed separate counsel?

A. Yes, I did.

Q. Okay. And, in fact, did you determine that

1 you needed separate counsel before you even drafted --

2 MR. COHEN: Objection, Your Honor. This is  
3 outside the scope of my direct examination. And I move  
4 to strike the previous response to the question. I  
5 raised -- other than going through the technical  
6 details of this agreement, I asked her no questions as  
7 to why she signed it, any dispute she had with the  
8 Attorney General, whatever.

9 THE COURT: But the document you've moved to  
10 be admitted into evidence.

11 MR. COHEN: Yes.

12 THE COURT: And now that it's evidence,  
13 counsel has the right to cross-examine on the document  
14 that's been admitted into evidence.

15 MR. COHEN: Oh, I don't dispute that, Your  
16 Honor. It's my understanding counsel is seeking to  
17 inquire as to reasons outside this document bearing on  
18 her signature to the document. And I didn't raise any  
19 of those issues in direct examination.

20 MR. MANTANONA: Your Honor, I'm just -- the  
21 statement is -- I'm trying to clarify that my client  
22 did sign this document, and whether this document  
23 actually reflects her personal feelings and her need  
24 for the emergency procurement.

25 THE COURT: Well, she said yes, I think.

1 MR. MANTANONA: Then move to strike.

2 MR. COHEN: No, not that of course.

3 MR. MANTANONA: Okay.

4 Q. On the first page, on Page 1 of the KK, do you  
5 know that document?

6 A. Yes.

7 Q. And can you read the last sentence of that  
8 document?

9 A. The full sentence?

10 Q. Yes, please.

11 A. "For the reasons stated in the attached  
12 Certificate of Emergency, I wish to delegate my  
13 procurement authority to your office to assist me  
14 in securing legal representation in the case."

15 Q. And so who did you give that authority to?

16 A. To the Governor's legal counsel.

17 Q. And Mr. Cohen asked you whether you sought the  
18 approval or consulted with the Attorney General or his  
19 office in regards to this document, and you said no?

20 A. That's correct.

21 Q. Why didn't you?

22 A. I, uhm, I concluded that he would not approve.

23 Q. Were you seeking to discharge him as your  
24 counsel?

25 A. I was seeking to discharge him as my counsel.

1 Q. You believed a conflict exists?

2 A. Yes.

3 Q. Do you believe a conflict exists today?

4 A. Yes, I do.

5 Q. And what relief are you seeking from the Court  
6 today?

7 A. I am seeking for the Court to approve my legal  
8 representation by your office, by yourself.

9 MR. MANTANONA: Thank you.

10 No further questions, Your Honor.

11 MR. COHEN: I have some redirect, Your Honor.

12 **REDIRECT EXAMINATION**

13 BY MR. COHEN:

14 Q. Ms. Perez, I direct your attention to Exhibit  
15 BB in the notebook before you. Would you kindly open  
16 that up and turn to exhibit double B.

17 (Pause.)

18 MR. MANTANONA: Your Honor, can I have the  
19 question repeated? I apologize.

20 MR. COHEN: I asked her to open to Exhibit BB  
21 in the notebook.

22 MR. MANTANONA: Your Honor --

23 MR. COHEN: Exhibit notebook.

24 MR. MANTANONA: I'm going to object to any  
25 reference to any -- this is going beyond the scope of

1 his direct, his direct and now my cross. No references  
2 were made to this document.

3 MR. COHEN: You need to look at it, counsel,  
4 before you can raise the objection.

5 MR. MANTANONA: Well, it wasn't referred to in  
6 your cross-examination.

7 MR. WEINBERG: Mr. Mantanona, I believe that  
8 you brought up the question of (inaudible) --

9 THE COURT: Sir, Mr. Weinberg, we're not  
10 picking you up when you're make the statement.

11 MR. WEINBERG: My apologies, Your Honor. I  
12 was just saying that Mr. Mantanona asked the witness  
13 about her desire to discharge the office of the  
14 Attorney General and that's what Exhibit BB relates to.

15 MR. COHEN: Okay.

16 Q. Have you now turned to Exhibit BB?

17 A. Yes, I have.

18 Q. Excuse me?

19 A. Yes, I have.

20 Q. Okay. Have you seen that document before?

21 A. Yes.

22 Q. And what is it?

23 A. It's a letter to the Attorney General  
24 requesting that he sign a substitution of counsel for  
25 myself.

1 Q. Okay. And did you sign that?

2 A. Yes, I did.

3 Q. And what's the date of that document?

4 A. December 9th.

5 MR. COHEN: Your Honor, I offer Exhibit BB.

6 (Pause.)

7 THE COURT: Mr. Mantanona?

8 MR. MANTANONA: Your Honor, I have no  
9 objections to the document.

10 THE COURT: All right. Exhibit BB admitted  
11 into evidence without objection.

12 MR. COHEN: BB, yes.

13 Q. Ms. Perez, I ask you now to direct your  
14 attention to Exhibit DD in the notebook.

15 A. I see it.

16 Q. Okay. Have you seen that document before?

17 A. Yes, I have.

18 Q. And is that document Exhibit DD in response to  
19 your letter Exhibit BB?

20 A. Yes, it is.

21 (Pause.)

22 MR. COHEN: Your Honor, I offer Exhibit DD  
23 into evidence.

24 MR. MANTANONA: Your Honor, we'll object to  
25 DD.



1 MR. COHEN: Your Honor, she has identified  
2 that as her document.

3 THE COURT: Well, what's the reason for the  
4 objection?

5 MR. MANTANONA: Your Honor, it contains a  
6 legal opinion by the Attorney General's Office, which  
7 is one of the core issues in regards to this position.  
8 It's an opinion.

9 MR. COHEN: Let me --

10 MR. MANTANONA: It's not relevant to the  
11 solicitation. Part of it is when he denies her  
12 request, but it contains legal opinions that are not  
13 relevant.

14 MR. COHEN: That's entirely irrelevant.

15 Q. But let me ask you this, Ms. Perez. Would you  
16 please read the --

17 THE COURT: Wait, hold on, there's an  
18 objection.

19 MR. COHEN: Excuse me?

20 THE COURT: You're asking that it be admitted  
21 into evidence and it hasn't been resolved yet.

22 MR. COHEN: Okay. I've offered this document  
23 into evidence. The testimony so far is that the  
24 witness, she's seen this document, she received this  
25 document, and that this document is in response to

1 Exhibit BB which she had sent to the Attorney General.  
2 And, indeed, the first paragraph, the first sentence of  
3 this exhibit says "I am in receipt of your letter dated  
4 December 9th, 2004, requesting that I withdraw my  
5 representation of you in the above styled matter."

6 So this is the response of the Attorney  
7 General to Exhibit BB which is now into evidence, so  
8 it's -- and the witness has testified she received that  
9 document. So it's now proper to have this response  
10 offered into evidence and to be admitted into evidence,  
11 Your Honor.

12 MR. MANTANONA: Your Honor, we believe it's  
13 improper to admit it into evidence because it contains  
14 a legal opinion of the Attorney General in regards to  
15 this case. We'll stipulate that this document is a  
16 denial of Ms. Perez's request, but besides that, we  
17 refuse to -- or we do not agree that it should go  
18 before the Court to have an internal argument contained  
19 within the evidence proffering the Attorney General's  
20 position. To me that's improper.

21 Thank you.

22 THE COURT: All right. The Court will admit  
23 Exhibit DD into evidence. Any questions of law is to  
24 be determined by the Court solely without regard to  
25 anything else.

1 MR. COHEN: Thank you, Your Honor.

2 I have no further questions of the witness at  
3 this time, Your Honor.

4 THE COURT: Mr. Mantanona?

5 MR. MANTANONA: Your Honor, at this time, we  
6 have no further questions of Ms. --

7 THE COURT: All right. Thank you, Ma'am,  
8 you're excused.

9 All right. The Court notes that it's 12:30,  
10 and I can go for another two hours but I need to ask  
11 counsel what do you desire to do at the moment.

12 MR. COHEN: I propose we come back after  
13 lunch, Your Honor.

14 MR. CALVO: Your Honor?

15 THE COURT: Mr. Calvo.

16 MR. CALVO: If it please the Court, I would  
17 propose we come back after lunch. However, Your Honor,  
18 I think that we've heard enough. I think that the  
19 issue here is the motion to strike as counsel for the  
20 People that have been on the stand, and I think there's  
21 been a clear exhibition of hostile conduct from people  
22 that purport to be counsel for the folks on the stand.

23 THE COURT: All right, let me ask if there are  
24 additional witnesses the government or the Attorney  
25 General desires to call. Mr. Weinberg?

1 (Pause.)

2 MR. WEINBERG: (Inaudible.)

3 THE COURT: Sir, let me ask that you pull that  
4 mic closer to you again, all right?

5 MR. WEINBERG: Is that better?

6 I was just saying that Ms. Taitano's testimony  
7 will be necessary as to the question of the propriety  
8 of Calvo and Clark's representation in this case. The  
9 last two witnesses had to do with Mr. Mantanona, but  
10 Calvo and Clark's testimony I think can --

11 THE COURT: But isn't the issue as I see it,  
12 perhaps the Attorney General's argument that they  
13 entered into this contract without there being any  
14 emergency; that would be your argument I think, right?

15 MR. WEINBERG: In the case of, as we under-  
16 stand what, what these gentlemen are doing here, in the  
17 case of Mr. Mantanona's representation of Mr. Ilagan  
18 and Ms. Perez, the Governor purported to declare an  
19 emergency or accept the declaration of an emergency as  
20 to his contract in getting them representation, but the  
21 Calvo and Clark law firm is here under a different  
22 legal argument, I think. I'm sure the Calvo and Clark  
23 will correct me --

24 THE COURT: But if it's under a different  
25 legal argument, why do you need testimony in regards to

1 a legal argument?

2 MR. WEINBERG: There are facts as to, as to  
3 the legality of -- I mean, perhaps we can stipulate as  
4 to what happened with the documents or something, but I  
5 thought it would be just as easy to go through it with  
6 Ms. Taitano.

7 THE COURT: Mr. Calvo?

8 MR. CALVO: Yeah, I think that -- I guess my  
9 point, Your Honor, is that we spent, you know, a good  
10 part of close to three hours, what was a clear showing  
11 that the Attorney General's Office is hostile to the  
12 people that they purport to represent. They expand  
13 their questioning beyond the relevant issue at hand,  
14 they go into attorney-client privilege, they go into  
15 non-relevant areas where we have had to object and  
16 protect the interests of who they purport they are  
17 representing. And I think there's something --

18 THE COURT: Okay, let me ask Mr. Weinberg. As  
19 to the legal theory behind the Calvo Clark contract,  
20 what facts do you need to undertake?

21 MR. WEINBERG: I just want to establish in the  
22 record, apparently there was a conflict, what we call a  
23 conflicts counsel arrangement where the Attorney  
24 General had agreed that Calvo and Clark could represent  
25 the Governor's Office in two cases, or a couple of

1 cases--it might have been more than that. Subsequent  
2 to that, and to the Attorney General signing that  
3 agreement, Calvo and Clark over a number of -- a number  
4 of months and the Governor's Office attempted to get  
5 the Attorney General to sign amendments to that  
6 contract authorizing Calvo and Clark to represent the  
7 Governor in this and other matters that we did not  
8 authorize them to.

9 So it's our argument that, that you still need  
10 the Attorney General's signature under the laws of Guam  
11 on a contract for legal services for the Governor.

12 THE COURT: Why would you need additional  
13 facts for purposes of arguing on that issue?

14 MR. CALVO: The only problem, Your Honor, is  
15 that the Attorney General refuses to sign our contract.  
16 So more appropriately the Attorney General should  
17 testify rather than anyone from the --

18 THE COURT: But I thought he's telling me that  
19 the Attorney General -- the Governor has requested that  
20 a contract that the Attorney General has previously  
21 approved be amended to include this case within the  
22 coverage of that agreement?

23 MR. CALVO: This case and another case that's  
24 already concluded, Your Honor.

25 THE COURT: And they haven't been --

1 MR. CALVO: The Attorney General refuses to  
2 sign the contract.

3 THE COURT: To amend?

4 MR. CALVO: Yes.

5 THE COURT: Or to extend?

6 MR. CALVO: Right.

7 MR. WEINBERG: Well, actually to amend to  
8 include this case.

9 THE COURT: And another case?

10 MR. WEINBERG: And another case. Correct.  
11 And the Attorney General in his discretion has  
12 determined --

13 THE COURT: All right, so based on your  
14 refusal to sign, you're saying that they have no  
15 authority then to represent the Governor?

16 MR. WEINBERG: Correct.

17 THE COURT: That's the legal argument?

18 MR. WEINBERG: Correct.

19 THE COURT: So why do we need testimony in  
20 that regard?

21 MR. WEINBERG: Well, also, we're trying to  
22 determine the scope of the unlawfulness of this  
23 agreement. The latest version we've seen appears to  
24 backdate the agreement back into April of last year.  
25 Or the latest version that we've seen, I might be

1 mistaken on this.

2 MR. CALVO: Your Honor, I think the purpose is  
3 to embarrass the Administration. There's a case that's  
4 concluded, Your Honor, where opposing counsel, it was  
5 the Moylan versus Camacho case, where opposing counsel  
6 representing the Lieutenant Governor was Mr. Phillips  
7 here, and he was representing the Lieutenant Governor.  
8 The Attorney General had no problem signing that  
9 contract. In fact, Mr. Phillips has been paid in full  
10 on that case, which concluded. We have not had our  
11 signed contract returned yet.

12 MR. PHILLIPS: (Overlapping/unintelligible.)

13 MR. CALVO: The Attorney General has gone on a  
14 sit-down strike with respect to the Administration.

15 THE COURT: I see we've awakened Mr. Phillips.  
16 (Laughter.)

17 MR. PHILLIPS: For the record, Your Honor, the  
18 Attorney General had grave heartache and we had to go  
19 through the proper procedures in order to do it.

20 THE COURT: Well, thank you for finally saying  
21 something there.

22 MR. PHILLIPS: It was totally an emergency  
23 (inaudible).

24 MR. CALVO: It was no knock on Mr. Phillips;  
25 I'm happy for him that he got paid.



1 (Laughter.)

2 MR. WEINBERG: I don't know what the relevance  
3 is about Mr. Phillips's contract with the Lieutenant  
4 Governor or not. It's clear, the parties all agree is  
5 that the Attorney General has not authorized, he has  
6 not signed the contract by which the Calvo and Clark  
7 law firm purports to be here and be representing the  
8 Governor.

9 THE COURT: And isn't that something that you  
10 can legally argue before the Court as opposed to  
11 bringing in additional testimony?

12 MR. CLARK: Your Honor, if I can address the  
13 Court. I haven't appeared yet before the Court;  
14 Arthur Clark, Calvo and Clark firm, just to clarify  
15 this contract.

16 In addition, Your Honor, because some of the  
17 -- it's not limited as far as the amendment to the  
18 contract is not limited to just this case or to the  
19 case Mr. Calvo referred to that's been concluded.  
20 Matter of fact, I was in court yesterday on the  
21 overtime lawsuit where the Attorney General has  
22 directly sued the Governor on a writ of mandate to  
23 force the Governor to pay overtime, and yet that also,  
24 the Attorney General has refused to sign the amendment  
25 in order to permit the Governor to retain counsel on

1 that particular case.

2 And Mr. Weinberg is talking about the back-  
3 dating of the amendment, Your Honor. What he's  
4 referring to is, even though the Attorney General has  
5 been suing the Governor for months and has refused to  
6 sign the contract to authorize the attorney -- the  
7 Governor to retain counsel to defend himself against  
8 the Attorney General's Office, what the Governor is  
9 seeking is compensation for Calvo and Clark going back  
10 to the date that we actually entered an appearance and  
11 started representing the Governor against the cases  
12 directly naming the Governor as a defendant.

13 MR. JACOB: One other point, Your Honor,  
14 Rodney Jacob for Calvo and Clark, is that in the Moylan  
15 versus Camacho case in the Superior Court, the Attorney  
16 General's Office went on the record saying that there  
17 was no objection to Calvo and Clark representing the  
18 Governor, yet they refused to sign the agreement. The  
19 only issue in this matter is whether the Attorney  
20 General can come here, be nakedly hostile against the  
21 Governor, the departments in the Administration, and  
22 stand up and say there's no contract because the  
23 Attorney General won't sign it. That is the issue  
24 they're trying to create which are red herrings.

25 UNKNOWN VOICE: And it's not proper or right

1 (inaudible).

2 THE COURT: Wait. Well, counsel, that's where  
3 I think that additional testimony is not needed. We  
4 can come back in the afternoon, argue the legal  
5 implications of -- you know, you can make the  
6 representation to the court that this occurred and  
7 they can certainly counter and say something else,  
8 as opposed to bringing in testimony just to delay the  
9 proceeding.

10 MR. JACOB: Your Honor, also if I may? This  
11 is such a serious issue, and the naked hostility of an  
12 attorney against a client that they continue to purport  
13 to be at least warrants briefing so this court has a  
14 full record. It is such an important issue that these  
15 folks have tried to hijack in the name of the very  
16 clients that they are outwardly and nakedly hostile to.

17 UNKNOWN VOICE: And it is a gross violation  
18 of --

19 THE COURT: But that's what we're going to  
20 determine when we come back, whether or not the motion  
21 to strike should be granted or not, or whether or not  
22 we allow the entry of appearances on your behalf, made  
23 by you on behalf of these defendants.

24 MR. JACOB: Your Honor, there was not full  
25 briefing in this issue. They filed a motion to strike

1 and the Court issued an order that said no further  
2 briefing was needed on the issue. Although Calvo and  
3 Clark filed an abbreviated issue on this -- memo on  
4 this issue, we feel that it is so important and that  
5 there are documents that the court should consider  
6 before it considers an issue on a procurement issue  
7 like this, where they are trying to nakedly hijack  
8 these proceedings because the attorney -- the sole  
9 reason is because the Attorney General will not sign  
10 off on a contract that was lawfully approved through  
11 the procurement process.

12 UNKNOWN VOICE: And Your Honor, again my --

13 THE COURT: But here's my point though.  
14 Here's my point. We've had the Attorney General filing  
15 this motion to strike, and it seems that in the initial  
16 moving papers he raises the procurement law as an issue  
17 in support of his motion, and what I find troubling  
18 though is that if counsel thinks that you haven't  
19 briefed it fully, at the same time, you've never come  
20 to court and asked the Court to reconsider its prior  
21 orders that no further briefing be made, so that you  
22 can ask to file additional papers.

23 MR. JACOB: Your Honor, what we did do was  
24 we filed a, what is permitted by Rule 19.1, a  
25 substitution. And all that needs to be done on that

1 substitution for the purposes of the Governor to be  
2 heard, and which will moot out all of these issues, and  
3 they can be brought in another forum is for the Court  
4 to sign it. I think that there is definite predicate  
5 here.

6 The Court has witnessed probably an  
7 unprecedented display of hostility from the Attorney  
8 General's Office who purports to represent line  
9 agencies, but also my client the Governor, and all that  
10 needs to be done is the order for substitution to be  
11 signed. They beg the question in the motion to strike,  
12 they said, well, strike them, because where is the  
13 substitution. We filed it, we followed it. That was  
14 just a joke, I guess. It's before the court, they  
15 refused to sign it, we've done everything appropriate  
16 according to the rules, and all that needs to be done  
17 to moot out all of this nonsense is that the Court  
18 needs to sign the order, and there's no good reason for  
19 it not to. And what they're trying to do on the  
20 procurement issues is just a red herring.

21 MR. WEINBERG: I can appreciate Mr. Jacob's  
22 enthusiasm. We have a significant legal question here.  
23 I think the Court probably has heard enough testimony  
24 to know what's going on. The Court and the parties can  
25 probably stipulate as to documents as to the -- as to

1 the history of Calvo and Clark and the Governor's  
2 Office attempting to get their contract amended for  
3 this case. Beyond that, the motion to strike, we have  
4 a question of law.

5 THE COURT: You know, let me just tell counsel  
6 what I believe the issue before the Court is, really.  
7 It's not so much whether the Court approves the  
8 contracts that have been entered, that is entered into  
9 with the individual defendants, the issue is who is  
10 going to represent who today. That's the only issue  
11 I'm interested in.

12 I don't care how much you're charging your  
13 clients, I don't care whether the Attorney General has  
14 signed those or not. The only issue I want to  
15 determine today is as to these defendants, who properly  
16 can speak for them in court today. That's what I want  
17 to decide, nothing else, as to the motion to strike.

18 So, it seems to me that we can argue that  
19 motion without additional testimony. What has been  
20 testified to by Mr. Ilagan and Ms. Perez seems to  
21 perhaps bring into play the objections that you have  
22 regarding those individuals seeking counsel other than  
23 the Attorney General, and it seems to me that those  
24 same reasons apply to Calvo and Clark.

25 MR. WEINBERG: They do at least with respect

1 to the failure to obtain the Attorney General's consent  
2 and signature on their contract. That aspect of the  
3 Guam procurement law and the requirement that contracts  
4 for legal services be signed and approved by the  
5 Attorney General, I think all are in agreement that the  
6 Attorney General has refused to sign the contract with  
7 Calvo and Clark.

8 THE COURT: And the Attorney General has also  
9 refused to sign the substitution.

10 MR. WEINBERG: And that as well.

11 THE COURT: Right. So that's also going to  
12 come into play here. That's why the Court isn't  
13 prejudicing them from arguing really, because you  
14 haven't signed the substitution. They're here before  
15 the Court today to make their argument.

16 MR. WEINBERG: I don't follow what the issue  
17 is with the substitution of counsel. Obviously, if we  
18 were to sign that, that would moot the question. It  
19 did in fact look like it was a joke, it was presented  
20 to us when it was brought to my office to sign it --

21 THE COURT: The court hasn't signed the  
22 substitution, really, because it would be improper to  
23 sign the substitution in light of the motion to strike  
24 that's before it.

25 So why don't we come back after lunch and be

1 prepared to argue the motion then, not so much put on  
2 additional testimony, but be prepared to argue the  
3 motion. Is that understood?

4 MR. CALVO: Yes, Your Honor.

5 MR. JACOB: Thank you, Your Honor.

6 MR. WEINBERG: Fine, Your Honor.

7 UNKNOWN VOICE: Yes, Your Honor.

8 THE COURT: All right. We have a matter  
9 that's set for 2:00. I'm just going to go to  
10 McDonald's and buy the McChicken that's a dollar, and  
11 then tell the clerk that I'm a senior, so I can get a  
12 drink for 35 cents, so I can have lunch today for a  
13 \$1.35 and have a quick lunch. So why don't we have you  
14 back around 2:00 so that we can commence right when  
15 we're done with this case that's scheduled for 2:00  
16 o'clock.

17 MR. PHILLIPS: Your Honor, if I may address  
18 the court?

19 THE COURT: Yes, Mr. Phillips.

20 MR. PHILLIPS: Does the Court anticipate  
21 addressing the remaining matters today? Because if  
22 not, then I think that will save the witnesses a lot  
23 of trouble too --

24 THE COURT: I think you have a good point  
25 there, that we might be hearing only the motion to



1 strike this afternoon.

2 Is there any objection if we release the  
3 witnesses as to the other issue?

4 MR. PHILLIPS: As long as the other issue is  
5 being released for the day, Your Honor.

6 THE COURT: All right, and subject to recall  
7 by the Court.

8 MR. PHILLIPS: I think there's also, although  
9 I can't speak for the Court, the possibility the Court  
10 might reserve and not resolve that question, and so it  
11 might, along with the court's suggestion be more  
12 prudent to go ahead and resolve this, and then very  
13 quickly move to the next issue, although not today.

14 THE COURT: And I'm glad that Mr. Phillips is  
15 finally making statements to the court this afternoon.

16 I agree with Mr. Phillips, why don't we  
17 discharge the witnesses as to your motion for the day  
18 and just deal with the motion to strike. I think it's  
19 going to take all afternoon.

20 MR. CALVO: Your Honor?

21 THE COURT: Yes, Mr. Calvo.

22 MR. CALVO: Because of the other matters, and  
23 Mr. Phillips has reminded me that we might have some  
24 scheduling issues. If the court anticipates the  
25 hearing continuing tomorrow I think on the Governor's

1 side we might have some scheduling matters. I know  
2 that --

3 THE COURT: Why don't we determine that at the  
4 conclusion of this afternoon's proceedings, so that  
5 it's clear that whether the hearing we do set is  
6 convenient for everybody.

7 MR. CALVO: Thank you, Your Honor.

8 UNKNOWN VOICE: Thank you, Your Honor.

9 MR. MANTANONA: Your Honor, administrative  
10 matter. On behalf of Ms. Perez and Mr. Ilagan, we'd  
11 like to move in the respondent's R exhibit that was  
12 addressed.

13 THE COURT: I'm sorry, I didn't hear.

14 MR. MANTANONA: Exhibit R or People's Exhibit  
15 R.

16 (Pause/discussion not audible.)

17 MR. MANTANONA: Oh, it's joint.

18 THE COURT: And what's --

19 MR. MANTANONA: It's respondent's Exhibit R.

20 THE COURT: Okay. And what did you want the  
21 Court to do?

22 MR. MANTANONA: Just want to admit it into  
23 evidence for the purposes of this hearing.

24 THE COURT: Oh. Is there any objection to  
25 that?

1 MR. WEINBERG: Mr. Mantanona wants to move  
2 into evidence a legal opinion from the Attorney  
3 General? Is that what that is?

4 COUNSEL: No objection.

5 THE COURT: All right, Exhibit R then admitted  
6 into evidence without objection.

7 All right, counsel, have a good lunch; we'll  
8 see you this afternoon.

9 COUNSEL: Thank you, Your Honor.

10 (Recess was taken.)

11 (Proceedings resumed at 2:26 p.m.)

12 THE CLERK: Civil case 04-00006, Julie Babauta  
13 Santos, individually and on behalf of all those  
14 similarly situated, versus Felix A. Camacho, Governor  
15 of Guam, et al., continued motion to strike appearances  
16 and pleadings, and motion for relief from order issued  
17 by the Court on November 12, 2004.

18 Counsel, please state your appearances.

19 MR. PHILLIPS: Mike Phillips for the  
20 petitioner, and interim class counsel.

21 MR. CALVO: Eduardo Calvo for the Governor of  
22 Guam.

23 MR. JACOB: Rodney Jacob for the Governor of  
24 Guam.

25 MR. BENJAMIN: Daniel Benjamin for the

1 Governor of Guam.

2 MS. TAITANO: Shannon Taitano for the Governor  
3 of Guam.

4 MR. MANTANONA: Afternoon, Your Honor, Rawlen  
5 Mantanona for the Director of Revenue Taxation, Lourdes  
6 Perez, and the Director of Rev -- Adminis -- Rev and  
7 Taxation, Artem -- excuse me -- Art Ilagan.

8 MR. COHEN: Stephen Cohen, counsel for the  
9 respondents.

10 MR. WEINBERG: Rob Weinberg, Attorney  
11 General's office, also counsel for all the respondents.

12 THE COURT: Mr. Weinberg, or Mr. Cohen?

13 MR. WEINBERG: (Inaudible.)

14 THE COURT: Yes, why don't we proceed then.

15 MR. WEINBERG: May it please the Court, the  
16 issue is a simple issue, and that is, who controls the  
17 litigation, who represents the defendants, the  
18 Government of Guam official defendants in this case.

19 I want to get some law out of the way real  
20 quick on something we heard testimony about, I just  
21 want to bring the Court's attention to, I think it's  
22 already been cited, at least with respect to the  
23 contracts at issue here.

24 5 Guam Code Annotated Section 5121(b) provides  
25 that: "No contract for the services of legal counsel in

1 the executive branch shall be executed without the  
2 approval of the Attorney General." That's Guam law.

3 5 GCA Section 22601 provides that all  
4 contracts -- these are all contracts generally --  
5 "shall, after approval of the Attorney General, be  
6 submitted to the Governor for his signature."

7 We have two statutes requiring the Attorney  
8 General's signature. And one in particular with the  
9 provision of legal counsel to the Government of Guam  
10 and its agencies and officials.

11 THE COURT: Is that a provision that applies  
12 to autonomous agencies?

13 MR. WEINBERG: Your Honor, that's our -- that  
14 is an issue that's currently in litigation at the  
15 moment in the Guam Supreme Court, and it is our  
16 contention that it does apply.

17 THE COURT: Okay.

18 MR. WEINBERG: That even though autonomous  
19 agencies sometimes have the authority, and in fact as a  
20 matter of practicality, autonomous agencies are still  
21 required to submit all contracts through our office,  
22 and our contention is that legal -- contracts for legal  
23 services also have to be approved by our office.

24 THE COURT: Let me ask a question then. If  
25 that's your belief, if an autonomous agency decides to

1 procure legal services, and let's assume the Attorney  
2 General comes to the conclusion that it's not desirable  
3 that this firm be legal counsel to that agency, then  
4 under your theory, the law firm that's been chosen by  
5 the autonomous agency could never represent that agency  
6 absent approval on your part?

7 MR. WEINBERG: That is -- that is our  
8 contention, yes, Your Honor. And that issue actually  
9 is before the Guam Supreme Court right now with respect  
10 to the airport.

11 THE COURT: Okay.

12 MR. WEINBERG: And it has been briefed and  
13 argued and we're awaiting a decision.

14 Finally -- finally, under the Administrative  
15 Rules and Regulations, 2 GAR Section 212(b), also  
16 provide that: "No contract for the services of legal  
17 counsel in the executive branch shall be executed  
18 without the approval of the Attorney General."

19 So here we've had testimony in this case, and  
20 it's all counsel have stipulated that the Attorney  
21 General has not approved any of the contracts, or  
22 either Mr. Mantanona or the Calvo and Clark with  
23 respect to this case.

24 THE COURT: Has the Attorney General approved  
25 the contract for Moylan versus Camacho?

1 MR. WEINBERG: I don't know.

2 And I can report back to the court and I can  
3 find out, but I do not know.

4 THE COURT: Okay.

5 MR. WEINBERG: Now, that's just Guam law. But  
6 it is the position of this office, as it is in this  
7 case and in other cases, that in 1998 Congress amended,  
8 the U.S. Congress amended the Organic Act to provide  
9 something that Guam has never had before, and that is  
10 a chief legal counsel for the Government of Guam. And  
11 all that entails is more than just, here's a lawyer.  
12 And it also provided that the Legislature may provide  
13 that the Attorney General is elected, if it desires,  
14 which it did.

15 So in 1998 and 1999 the Legislature, the Guam  
16 Legislature provided that the Organic Act established  
17 Attorney General shall be elected. And the question  
18 now becomes for this court, and some of us, is what  
19 does that mean. Does that mean that there's just  
20 another lawyer down the hall from the -- from the  
21 Governor, or the Director of RevTax, or the Director  
22 of Administration, or a line or autonomous agency, and  
23 if that person chooses to use that attorney in the  
24 Attorney General's Office, he or she may, or if  
25 dissatisfied with the attorney, can go hire lawyers

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District Court of Guam

1 outside of it, outside of the Attorney General's  
2 Office.

3 And the answer is no. The answer is, and  
4 we've cited lots of case law, that if you look at the  
5 title and the concept of the role of chief legal  
6 counsel in a constitutional sense, and by which I mean  
7 here we have -- it is an office that is established in  
8 the Organic Act, it cannot be taken away.

9 Previously, attorneys general came and went at  
10 the whim of the Governor, and in essence that's what --

11 THE COURT: Well, could the Guam Legislature  
12 decide tomorrow to abolish the election of the Attorney  
13 General?

14 MR. WEINBERG: I believe so.

15 THE COURT: So it could?

16 MR. WEINBERG: It could provide that the --  
17 it could take away the election, or how the Attorney  
18 General is elected, yes.

19 So to me, that's -- whether the AG is elected  
20 or not is not so critical as the fact that it is an  
21 office established in the, in the Organic Act. And  
22 here what you have in this case is a carryover of the  
23 kinds of interaction between the Governor and the  
24 Attorney General you had in prior administrations.  
25 Dissatisfied with the legal counsel and the legal



1 direction chosen by the chief legal officer for the  
2 Government of Guam, the Governor has directed the  
3 Department of Administration and RevTax to sign these  
4 documents saying, declaring a state of emergency  
5 saying, give us a different lawyer, we think we have a  
6 conflict with you, we disagree with your legal  
7 analysis, we don't like the legal direction you have  
8 chosen for us.

9 Now, we have cited lots of cases that hold  
10 that it is the Attorney General, in a constitutional  
11 sense like ours, that sets legal policy. The Governor  
12 may set policy, general policy, executive policy, but  
13 when a contract is up for review, and when the  
14 provision of legal services to the Government of Guam,  
15 its agencies, instrumentalities, officers, it is the  
16 Attorney General's sole responsibility to decide who  
17 that lawyer shall be, and what the course of -- what  
18 the direction of litigation will be.

19 Unlike, and there's plenty of authority and  
20 we've cited it to the court already, unlike a limited  
21 number of jurisdictions that still hold that an  
22 Attorney General serves at -- in the same way that a  
23 private lawyer would, and a private lawyer has to take  
24 directions in sum and substance; it is a different  
25 animal with respect to the Attorney General, and a

1 governmental client.

2 I want to point out that in the --

3 THE COURT: Speaking of constitutional office,  
4 is the entitlement to representation, or outside  
5 representation different in the cases of, let's say,  
6 Perez and Ilagan as opposed to the Governor, because  
7 the Governor in effect has a constitutional office and  
8 those two do not?

9 MR. WEINBERG: I think that's a good question.  
10 Clearly, with respect to Ilagan and Perez, the Attorney  
11 General controls; they are line agencies within the  
12 executive branch.

13 Now the Governor, and I have seen case law,  
14 case law has been cited I believe, that sometimes the  
15 Governor may have a voice, may -- if he has an  
16 individual, an individual interest to assert, something  
17 where, for example, if the Legislature were somehow  
18 encroaching on his authority and you had a separation  
19 of powers problem, or issue, where the Governor might  
20 be entitled or ought to be entitled, I would argue, to  
21 independent counsel of his choosing, if there's a  
22 direct conflict as to the Governor's powers and duties.

23 But where you have a situation, as here, where  
24 you have a question, is the EITC due and payable -- and  
25 I'm not answering that, these are the questions, it is

1 a legal question to be decided -- and how is it to be  
2 paid out, and what's the most efficacious way for the  
3 Government of Guam to resolve this legal question,  
4 goes to --

5 THE COURT: If the issue boils down to, how  
6 do you settle it, and the views differ between the  
7 Attorney General and the Governor, is that a situation  
8 where you think the Governor is entitled to independent  
9 representation?

10 MR. WEINBERG: I don't know about independent  
11 representation. I would go as far as to say that the  
12 Governor -- if a Governor has a complaint and has  
13 something that he says, it may, it may behoove the  
14 Government of Guam to allow him a voice. It may be  
15 advisable to do that.

16 THE COURT: But how does he show his voice,  
17 what's the vehicle in which he transforms his voice to  
18 be heard in court?

19 MR. WEINBERG: (Overlapping.) Well, with  
20 independent, or independent counsel. The problem is we  
21 don't have a provision for that in the law, in Guam.

22 THE COURT: But let's assume you're suing the  
23 Governor; is he then not entitled to independent  
24 representation because there's no such authorization  
25 in the statute?

1 MR. WEINBERG: I think in that case he is,  
2 where we are suing the government -- suing the  
3 Governor.

4 THE COURT: Irrespective that the law is  
5 silent in that regard, he is entitled to independent  
6 representation?

7 MR. WEINBERG: I, this is my opinion, yes,  
8 like in the Moylan versus Camacho over the Procurement  
9 Appeals Board question, the attorney -- the Governor  
10 ought to have his own attorney, because he is being  
11 sued directly by -- that is a direct conflict. But  
12 where --

13 THE COURT: But why can't you detach another  
14 Assistant Attorney General to represent him?

15 MR. WEINBERG: That has been offered in the  
16 past, and that can be done in the future. I mean  
17 that's one solution is to do that. And in fact, when  
18 the Attorney General first took office, we created  
19 conflict laws and created separate divisions where,  
20 if we were going to represent somebody, it was going  
21 to be one division, but if we were going to sue someone  
22 in the government it was another, and there were  
23 Chinese walls erected. And those are possible  
24 solutions to this problem, and that can be done.

25 I want to point out that of the cases cited by

1 the Governor for the proposition that he does get to  
2 control the substantive --

3 THE COURT: Well, you know, that just raises  
4 another question, really. If the Attorney General is  
5 the chief legal officer and if he decides the policy,  
6 why would we think that an Assistant Attorney General  
7 can take a position different from the chief legal  
8 officer of the Government of Guam?

9 MR. WEINBERG: I think your question is more  
10 one of practicality than -- your question is, can a --  
11 could an Assistant Attorney General create a Chinese  
12 wall around himself (inaudible), and --

13 THE COURT: But the AG's argument, though, is  
14 the dictates of litigation, that has to be determined  
15 by the Attorney General; he solely determines, you  
16 know, the litigation posture. So once he makes that  
17 determination, why would an assistant be authorized to  
18 go against that policy in the representation of another  
19 defendant?

20 MR. WEINBERG: I think we need to be a little  
21 bit more fact specific. In a case, for example, like  
22 this one, all right, just because the Governor  
23 disagrees, that does not entitle the Governor to  
24 independent counsel, just because he disagrees with  
25 whether legally the case against the Government of Guam

1 and its officials is due to be settled.

2 In a case like Moylan v. Camacho where the  
3 Attorney General was suing the Governor over his  
4 failure to appoint members of the Procurement Appeals  
5 Board, I mean, nobody is going to represent the  
6 Governor but somebody other than the AG, then the  
7 Attorney General, unless you walled off an Assistant  
8 Attorney General to represent him.

9 When the Judicial Council, Guam Judicial  
10 Council sued the office of Attorney General for --  
11 to evict us --

12 THE COURT: Are you still there, by the way?

13 MR. WEINBERG: We're still there. I don't  
14 know -- what is today's date? I'm not sure. I think  
15 we're supposed to be out by the end of next month.

16 The first thing that the Attorney General did  
17 was actually offer as attorney from our office to them  
18 to represent them to sue us, which the Judicial Council  
19 declined and they had their own, and that's not an  
20 issue. But just as a matter of interest, that's what  
21 happened.

22 You know, these are --

23 THE COURT: But did you insist that they be  
24 represented by the Attorney General or not?

25 MR. WEINBERG: No, we did not. We did not.

1 And in that case, and here's -- I don't mind telling  
2 the Court there's some dispute in our office, there is.

3 Here what we have in the Santos case, we have  
4 -- it is an entirely executive branch issue, to me --  
5 (inaudible) -- and there's some in the office, you have  
6 some separation of powers problems in compelling the  
7 Judiciary or perhaps even the Legislature to accept  
8 counsel of our choosing because of the separation of  
9 powers doctrine. I think it has been resolved in  
10 different ways, but --

11 THE COURT: But didn't the Organic Act say  
12 that he's the chief legal officer of the Government of  
13 Guam?

14 MR. WEINBERG: That's what the Organic Act  
15 says, we are the chief legal officer.

16 THE COURT: It didn't say the executive branch  
17 only?

18 MR. WEINBERG: Correct.

19 THE COURT: So why are we questioning  
20 separation of powers?

21 MR. WEINBERG: I'm not. I'm saying it's a  
22 question that may arise in the future. And so with  
23 respect to foisting an attorney on the Judicial Council  
24 when it sued us for eviction, there was some hesitation  
25 that you might run into a separation of powers problem

1 in doing that. You have to resolve the separation of  
2 powers consistent with the chief legal officer and what  
3 that means.

4 But here in Santos, we are clear that under  
5 these statutes that we're dealing with contracts for  
6 provision of legal counsel to the executive branch.  
7 And here it's clear that under the Organic Act, and  
8 these statutes, and the Guam common law which -- or the  
9 common law which Guam has adopted, that the Attorney  
10 General is -- makes the legal decisions with respect  
11 to settling cases or bringing cases or how to defend  
12 cases. And that all of that law has been cited.

13 Again, I keep trying to get to this point.  
14 The Governor's Office has --

15 THE COURT: In other words, the certificate  
16 that was filed by Mr. Ilagan and Ms. Perez, from your  
17 point of view, they don't have any valid points?

18 MR. WEINBERG: I don't -- yes, Your Honor.  
19 The certificate said -- and what was from Mr. Ilagan's  
20 testimony, I'm not quite sure that he really knew what  
21 he was even talking about when he talked about a  
22 conflict of interest, I couldn't get a straight answer  
23 from him as to what he thought, except that what he  
24 seemed to be saying was that it was a conflict because  
25 the legal positions of the Government of Guam had



1 changed over time. And that at one time the legal  
2 position of the Government of Guam was that you did not  
3 pay EITC at all, and now it is, now that legal position  
4 is that it should be paid and that the case should be  
5 settled. There may have been more, but I didn't get  
6 much of what he said was a conflict.

7 The other was, he was concerned about  
8 potential exposure to criminal liability for illegal  
9 expenditures for complying with the contract, and I  
10 didn't get a straight answer out of him as to what he  
11 really thought that was about either. All right.

12 THE COURT: Well, he seemed to imply the  
13 Troutman memorandum --

14 MR. WEINBERG: Yes, he was referring to the  
15 Troutman memorandum, which if you look at that, all  
16 right, says, in the first place that the 60 million  
17 dollars that's paid, or that is to be paid out over  
18 nine years, that does not have to be appropriated, so  
19 that doesn't come under the illegal expenditure  
20 provision. It doesn't have to be appropriated because  
21 under the Organic Act and federal law, it's set aside  
22 already.

23 And then the question came about attorney's  
24 fees and how would that be paid, and the answer to that  
25 was, well, the understanding as presented to the court

1 is that attorney's fees would likely be paid from a  
2 common fund created by the tax returns or the EITC  
3 refunds. So that also was excluded.

4 Now, what Mr. Troutman's memo did talk about  
5 was that -- was one line about future payouts for  
6 future EITC payouts would be due and payable. And the  
7 Governor's position appears to be that that is a  
8 statement that this is an illegal expenditure. The  
9 problem with that is that there's been no illegal  
10 expenditure. And frankly, that statement is a red  
11 herring, because the future payments, all it is in the  
12 settlement agreement is a recognition of what the state  
13 of the law is. And nobody disputes that EITC is  
14 supposed to be paid, I mean, to those who are qualified  
15 and meet the standards.

16 So, and then there was a fourth issue, and I  
17 don't recall what that was. But also -- (pause) --

18 What was the fourth issue?

19 MR. CALVO: The administration of a million  
20 dollars.

21 MR. WEINBERG: Oh, the million dollars of  
22 administrative fee was set in there. And as far as I  
23 know, none of that has been done. So, you know, but  
24 the point is --

25 THE COURT: Did Mr. Ilagan say that after he

1 published the notice, he found out that he had no  
2 appropriations to undertake the other requirements that  
3 he was part of under the settlement?

4 MR. WEINBERG: Well, somebody told him that,  
5 and the problem is he did not consult with his lawyers  
6 about that, he didn't consult with the Attorney  
7 General's Office about that, and bring that to our  
8 attention.

9 THE COURT: What would you have told him?

10 MR. WEINBERG: We would have examined the  
11 question, we would have.

12 You know, part of the deal here is that the  
13 Governor has an immediate responsibility to go to the  
14 Legislature about how to deal with some of these  
15 administrative logistical questions, and whether the  
16 Governor has done that or not, we don't know. But we  
17 believe that he has not. I know that back in July the  
18 Legislature sent the Governor a letter and said, you  
19 need to come talk to us about how we're going to  
20 administer this settlement. And the Governor has  
21 been on notice ever since June and July of the  
22 administrative issues that were going to come up.

23 Now, if there were problems with the  
24 settlement, then those can be brought to the attention  
25 of the court. The Governor's complaints, or anybody's

1 complaints that a settlement is illegal or that there's  
2 a violation of illegal expenditure, that's for the  
3 fairness hearing. As to whether or not the Court can  
4 impose this or not, as to whether or not the Court can  
5 require the Government of Guam to commit to paying EITC  
6 payments in the future, or can commit to making these,  
7 to doing these things, those are subject matters,  
8 that's a subject to be brought at a fairness hearing.  
9 But, what we heard Mr. Ilagan say was that he was -- I  
10 mean, I didn't get much from him other than he was  
11 essentially confused and he was signing on the dotted  
12 line somebody provided for him. And that's my take on  
13 it.

14 But let's look at what he signed. He signed  
15 the Certificate of Emergency, and let's look at what an  
16 emergency is under Government of Guam law. All right.  
17 Under 5 GCA Section 5030(x), 5 GCA 5030(x), emergency  
18 means "a condition posing an imminent threat to public  
19 health, welfare or safety which could not have been  
20 foreseen through the use of reasonable and prudent  
21 management procedures, and which cannot be addressed by  
22 other procurement methods of source selection."

23 All right. And then in the Administrative  
24 Regulation, 2 GAR Section 3113 requires, says that an  
25 emergency -- "emergency procurement when there exists a

1 threat to public health, welfare or safety."

2 Again, so the questions I wanted to get to  
3 with Mr. Ilagan, but we can all just ask ourselves,  
4 from his testimony, what emergency met the definition  
5 of, of an imminent threat to public health. He  
6 identified none. He said, he said he was worried about  
7 perceived conflict of interest, or he was worried about  
8 potential criminal liability in his personal capacity.

9 Public welfare, imminent threat to welfare?  
10 Imminent threat to safety? So if you look at the  
11 definition of what he tried to do to say I don't want  
12 my -- I don't want the Attorney General anymore, I want  
13 somebody different; Governor, tell me who I should  
14 hire. Mr. Mantanona was the low bidder, I'll take him.  
15 He comes up with, somebody comes up with this  
16 Certificate of Emergency that doesn't even fit the  
17 emergency, the definition of how to make an emergency  
18 procurement under Guam law.

19 And again, it just points back to the fact of,  
20 if RevTax and line agencies and autonomous agencies and  
21 people who are sued get to just declare an emergency  
22 and say I need somebody else, I don't like the advice  
23 my lawyer is giving me, because he's the chief legal  
24 counsel, then you have no chief legal counsel for the  
25 Government of Guam. And what you have is the

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District Court of Guam

1 Governor's Office setting up an independent and  
2 autonomous Attorney General's Office, staffed by  
3 Calvo and Clark and, and Mr. Mantanona, and God knows,  
4 and that's not what the Organic Act says.

5 The Organic Act says there's one chief legal  
6 officer for the Government of Guam, and that's the  
7 Attorney General. And it is the Attorney General who,  
8 under the common law, decides what is in the best legal  
9 interest, not policy, not general policy, but legal,  
10 makes legal decisions for the Government of Guam and  
11 its agencies and officers.

12 THE COURT: Well, whether or not you settle  
13 for 60 or 40 or 80, is that a legal question or a  
14 policy consideration?

15 MR. WEINBERG: (Pause.) It's a little bit,  
16 it's a bit of both. Obviously, getting 50 cents on the  
17 dollar is a good deal. But the ultimate question about  
18 whether there's liability, and if so, how to minimize  
19 and mitigate that liability and the potential damages,  
20 that becomes a legal decision for the Attorney General  
21 to make. So a lot of times it's going to appear to be  
22 overlap. But in those cases where, where how to  
23 mitigate and minimize the legal liability for the  
24 Government of Guam, then it becomes the Attorney  
25 General's.

1 Thank you.

2 THE COURT: Mr. Calvo?

3 MR. CALVO: Thank you, Your Honor.

4 Well, I think that fundamental to the  
5 attorney-client relationship is a right to be  
6 represented by counsel who you feel is going to  
7 protect your interests, protect the interests of who  
8 you represent, and so on. The Governor of Guam --

9 THE COURT: Doesn't that apply only to a  
10 setting where you retain counsel that's not paid for by  
11 the government?

12 MR. CALVO: I don't think so, Your Honor. I  
13 think that --

14 THE COURT: See, your right to an attorney  
15 now, can a defendant in a criminal case choose let's  
16 say Mr. Fisher that's back there, versus a public  
17 defender?

18 MR. CALVO: If he's able to pay for the  
19 attorney of his choice, yes; otherwise --

20 THE COURT: If he is not able to pay.

21 MR. CALVO: Then it's adequate counsel,  
22 through the process, and it could be the Public  
23 Defender.

24 In this case, we don't contest that the  
25 Attorney General is the chief legal officer for the

1 Government of Guam. He's designated as such under the  
2 Organic Act, and we recognize that. And I think if you  
3 look at the history of this particular case, you'll see  
4 how the Governor has tried to adhere to how things  
5 really should work, but really didn't.

6 In this case, this action was filed by  
7 Mr. Phillips back in February. The Attorney General  
8 came in and represented all respondents in the case.  
9 Not much happened in the case, including consultation  
10 with the Governor and the other respondents in the  
11 case. I think the testimony and the evidence supports  
12 that. Nevertheless, the Attorney General was the  
13 attorney, as the chief legal officer for the Governor  
14 and the other respondents.

15 A settlement was entered into. The settlement  
16 was entered into while the Governor was off island. He  
17 was not consulted on the settlement agreement, didn't  
18 have a chance to review it; nevertheless, as he's off  
19 island, the acting Governor is the Lieutenant Governor  
20 of Guam and the Attorney General as the chief legal  
21 officer for the Government of Guam were working  
22 together to enter into this settlement agreement.

23 He got back after the settlement agreement was  
24 signed over the weekend of September, I think it was --  
25 no, I'm sorry, June -- it was June 13th is when it was



1 signed. He arrived on the 15th. He got back and  
2 accepted that. The settlement agreement was signed.  
3 However, he was never consulted on the settlement  
4 agreement, but nevertheless as the Governor, the chief  
5 executive officer for the Government of Guam, tried his  
6 best to deal with the agreement that was entered into  
7 while he was off island.

8 Through this process, the Governor was  
9 concerned about a number of things, including how was  
10 funding going to be provided to fund this settlement  
11 agreement. He had communications with the Legislature  
12 about that, and there were communications from the  
13 Legislature asking where is the money coming from, how  
14 is this going to happen. Over the course of the  
15 litigation, there was intervention attempted by several  
16 other parties objecting to the settlement agreement.  
17 That was dealt with, that raised the concerns of the  
18 Governor. Some of the issues that came out through  
19 those procedures and through the public media really  
20 raised the Governor's concerns.

21 The Governor went to the Attorney General, his  
22 lawyers, and asked him, there's some questions about  
23 the legality of the contract, there's some questions  
24 about appropriations, there are all these issues that  
25 we have to deal with. He went to the chief legal

1 officer asking for advice.

2 His legal counsel, in house legal counsel,  
3 Ms. Taitano wrote a letter, that letter is in evidence,  
4 Your Honor, she sent it in September. She sent it to  
5 Mr. Cohen who is here, asking Mr. Cohen, hey, we have  
6 these questions about the -- about the contract, about  
7 the settlement, how it's going to be applied, whether  
8 it's legal or not. She sent another letter when she  
9 didn't get any response in October; there was no  
10 response.

11 Then came a letter from Mr. Troutman, from the  
12 Attorney General's Office, it's the October 13th  
13 letter, and if I may, Your Honor, I'd like to read a  
14 couple of provisions in that letter, which could  
15 really, really point out why the Governor and the other  
16 respondents were concerned about the situation, in  
17 addition to the other letters and communications or  
18 lack of communication that existed, as alluded to in  
19 the testimony this morning.

20 That letter dated October 13th of last year,  
21 Your Honor, was from Charles Troutman, and it reads --  
22 he wrote it to the Attorney General. This is the  
23 attorney for the Governor who is trying to have the  
24 respondents enforce a settlement agreement that the  
25 Governor wasn't aware of, wasn't -- didn't participate

1 in, but nevertheless is trying to deal with. And this  
2 letter comes in response, or is in response, or in  
3 reaction to the letters sent by Ms. Taitano asking her  
4 attorneys, or the Governor's attorneys what was going  
5 on.

6 In that letter, it points out that there are  
7 four basic parts of the EIC settlement agreement. The  
8 first one regards the 60 million dollar settlement  
9 amount; the second regards the attorney's fees to be  
10 paid to Mr. Phillips; the third is the commitment to  
11 apply and to pay EITC in the future; the fourth is  
12 administrative costs.

13 These are all part of the settlement  
14 agreement. It isn't an intention, it isn't an  
15 expression of what might happen, it isn't a condition;  
16 these are all part of the settlement agreement that was  
17 signed by Lieutenant Governor Moylan as he was Acting  
18 Governor during the Governor's absence, was signed by  
19 the Attorney General, not only as to form, but also as  
20 to legality.

21 In the contract itself, the Attorney General's  
22 representative signed the contract and opined through  
23 his signature that it was a legal contract.

24 Now, after, after looking at this letter, it  
25 became clear to the Governor that there were some

1 serious issues here. And, you know, this morning, Your  
2 Honor, we learned that Mr. Cohen was also on the other  
3 side of the issue when he was working for the Gutierrez  
4 Administration; apparently his opinion was that the  
5 EITC did not apply to Guam. So the Governor, trying to  
6 carry out his duties and functions as the executive  
7 officer for the Government of Guam, I think could be  
8 very concerned as to whether or not he was being  
9 adequately represented and whether or not he had the  
10 right legal advisors to help him carry out his duties.

11 And if I may, Your Honor, the second to the  
12 last paragraph on the last page of Mr. Troutman's  
13 letter provides, after discussing his opinion, which  
14 quite frankly, Your Honor, we don't agree with after  
15 discussing items one and two of the, of the settlement  
16 agreement, provides:

17 "However, the expenditure of unappropriated  
18 funds for other parts of the settlement that do not  
19 come within the scope of the Organic Act provision  
20 regarding payment of judgments for unpaid income tax  
21 refunds, items 3 and 4 above, would expose the Governor  
22 and our clients to the possible liability under 5 GCA  
23 Section 22401."

24 What client, what person would not be  
25 concerned. On one hand, the Attorney General, the

1 chief legal officer is saying, why haven't you done  
2 this, why haven't you funded the settlement agreement;  
3 why haven't you taken the steps regardless of the fact  
4 that there's no money to do that. He's asking the  
5 attorney -- he's asking Mr. Ilagan and saying that  
6 if you don't, you're exposed to possible contempt  
7 proceedings and criminal sanctions on one hand. On  
8 the other hand, there's this opinion which says it's  
9 illegal to comply with the settlement agreement.

10 So, I think that there can be no question  
11 that there's cause for the Governor and the other  
12 respondents to think that, look, you've been forced  
13 to enter into an unlawful agreement; now you're being  
14 instructed to implement that agreement, then you're  
15 being warned by the same office that if you do, you're  
16 being exposed to criminal liability. These are his  
17 attorneys.

18 The Governor at that time says, well, you  
19 know, maybe I might want to get independent advice and  
20 some counsel who is not, you know, all over the place  
21 with respect to these issues, and will give me advice  
22 I can rely upon, advice that I can trust. And with  
23 that, he went out and sought legal advice, as did the  
24 other respondents through the procurement process.

25 Now, there's much to do, and I know the Court

1 doesn't necessarily want to hear about the procurement  
2 issues and whether there's an emergency or not, but I  
3 offer to the court that every day you're represented  
4 by counsel in this conflicted state, giving this  
5 conflicted advice, telling you you're exposed to  
6 criminal liability is an emergency, every minute that  
7 you're being prevented from getting counsel who is  
8 going to give you the right advice.

9           You know, there may not be a typhoon, there  
10 may not be an earthquake, but there's certainly an  
11 emergency. And it's not only an emergency to yourself,  
12 it's an emergency to the office that you represent, to  
13 the people that you're responsible to, and to the  
14 taxpayers.

15           The Attorney General is very big about saying  
16 his duty is to the people of Guam, they elected him,  
17 it's his duty, he's the chief legal officer; therefore  
18 I could do this, and you have nothing to say about it.  
19 Well, the Governor has a duty to the people of Guam,  
20 Mr. Ilagan has a duty to the people of Guam, as does  
21 Ms. Perez. And that duty is being impeded by the  
22 Attorney General's Office. He is trying to hijack the  
23 ability of those officials to do their job under the  
24 guise of litigation, under the guise of legal policy.

25           The court asked a good question: Is 60 million

1 dollars a legal question, or is it an executive  
2 function issue, is it an administrative function issue.  
3 Well, I think the answer is very clear. Lawyers, even  
4 in private practice, Your Honor, are faced with that  
5 decision every day: Is it a business decision or is it  
6 a legal decision. We give legal advice, we implement  
7 legal policies, we take action. But the decision as to  
8 whether or not it's 60 million, 55 million, 70 million,  
9 whether or not the government has the ability to pay,  
10 whether the government can agree to a one million  
11 dollar administrative fee? That is, Your Honor, I  
12 submit, an executive function, an administrative  
13 function, a function that's been usurped by the  
14 Attorney General, a function that's been hijacked by  
15 his office. And worse yet, he's trying to prevent  
16 those executives from getting independent counsel.

17         There has not been one case that has been  
18 cited where a Governor or a respondent in a similar  
19 situation cannot be represented by counsel. I think we  
20 saw this morning, Your Honor, a gross example of  
21 violation of due process here. Quite frankly, it was  
22 really hard to take, Your Honor.

23         We have the Attorney General's Office  
24 purporting to represent these people after threatening  
25 them with criminal liability and telling them that they

1 would be held in contempt. We had them subpoenaed,  
2 Mr. Cohen signed the subpoena papers, for people that  
3 he's been consulting with, so they say, as clients.  
4 They get them on the stand, Your Honor, and they cross-  
5 examine them, they grill them. We have to object,  
6 we're going up and down objecting: Relevancy, attorney-  
7 client privilege. Nevertheless they continue, they try  
8 to get into the substance of the settlement agreement,  
9 they have these two people that are up here on the  
10 stand intimidated by this process. And it is an  
11 intimidating process.

12 Nevertheless their own attorneys, who  
13 purported to represent them, are there, you know,  
14 bordering, Your Honor, if I may, with no disrespect, on  
15 harassment. That's all it was. It was an exercise of  
16 harassment this morning. And I think it was a gross  
17 miscarriage of justice for the Attorney General's  
18 Office to do that. And then on the other hand say that  
19 they represent them. That's just wrong, Your Honor.  
20 And I hope the Court puts a stop to it.

21 These people need to be represented, the  
22 Governor needs to be represented. You cannot allow the  
23 Attorney General to hijack this process, you cannot  
24 allow him to hijack the functions of the executive.

25 We're aware that the Attorney General has



1 dual roles. We're not saying that the Attorney General  
2 can't espouse his legal policy or what he thinks is  
3 right or wrong, we're not saying he can't sue the  
4 Governor. You know, the Court in a different forum has  
5 issued an opinion. What we're saying is that he can't  
6 prevent these people from being represented, he can't  
7 prevent them from being heard. That's a disservice to  
8 the office of the Governor, to these respondents, and  
9 to the people of Guam.

10 We have submitted our -- I'm sorry.

11 THE COURT: Is the issue as simple as, well,  
12 I don't like the representation given to me by the  
13 Attorney General, I need independent representation;  
14 is the issue as simple as that or not?

15 MR. CALVO: I don't think it's as simple as  
16 that, Your Honor. I think that, in this case, I think  
17 they've gone too far. I think the Governor could have  
18 said, well, wait a minute, why did this agreement which  
19 was negotiated over a two or three-day period without  
20 consulting my representatives in the way they should  
21 have been consulted, or the people in the executive  
22 branch, while I was off-island in transit, why did it  
23 have to be signed on a Sunday. Is that the way we  
24 conduct business?

25 THE COURT: I see. But the Governor has not

1 undertaken any action to either set aside this  
2 agreement, if he thinks it's illegal -- I mean, you're  
3 talking June, July, August, September, October,  
4 November, December, January, Feb --

5 MR. CALVO: Exactly, Your Honor.

6 THE COURT: The Governor has not indicated to  
7 the court that he thinks it's illegal.

8 MR. CALVO: That's the very point I'm trying  
9 to make, Your Honor. The Governor gets back -- and  
10 there's deference given to the court's views, as his  
11 honor was in the Superior Court, to the other actions,  
12 to the really, the views of the Attorney General. The  
13 Governor got back and there was deference given, the  
14 Governor has tried to work with --

15 THE COURT: But in representing the public  
16 interest, the Governor should come up and step forward  
17 and say, hey, this agreement is not legal, change it.

18 MR. CALVO: Exactly, and that's what we're  
19 doing here. The Governor is not a lawyer. The  
20 Governor sent inquiries to his lawyers at the time. He  
21 wanted to get something back from the Attorney General  
22 that says, look, we allay all your concerns, this is  
23 the issue, and go through it one by one, so the  
24 Governor could have some confidence that he is doing  
25 his job. He has a duty to the public, and he is doing

1 his job.

2 What happened was, is that on the one hand,  
3 the Attorney General is trying to implement a  
4 settlement agreement, and on the other hand, there's  
5 a legal opinion from the Attorney General's Office that  
6 comes out in October 13th which says, that's an  
7 unlawful contract. You know, essentially, there are  
8 two basic points to the contract that are unlawful.  
9 And so the Governor is saying, what am I going to do,  
10 I've tried to work with the process, I've have tried to  
11 work with the Attorney General, I've tried to work with  
12 the Lieutenant Governor. It didn't work. I need to  
13 have independent counsel.

14 And then if you think it's so easy, Your  
15 Honor, here we are today being blocked by the Attorney  
16 General's Office. And not only is it not -- is it a  
17 question of emotion and objecting to our presentation,  
18 they get subpoenaed, Art Ilagan, represented by the  
19 Attorney General's Office, Ms. Perez and the Governor  
20 get subpoenaed. And the objections, as you heard today  
21 and sustained, were about relevancy and attorney-client  
22 privilege. The subpoenas, Your Honor, were about  
23 intimidation. They were about harassment. So it's not  
24 as easy and as simple as I disagree with the Attorney  
25 General.

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1           When we were trying to look at this case, Your  
2 Honor, and trying to figure out, you know, what is  
3 really going on, we really looked at the time line in  
4 this case and what has happened and whether or not the  
5 Governor sat on his --

6           THE COURT: See, one of the concerns I have  
7 is, you know, this issue, what prevents any employee in  
8 the government from saying, well, I disagree with the  
9 Attorney General's position in this matter, I need  
10 independent representation, and to come to the court  
11 and make the same arguments that you are to prevent the  
12 Attorney General from taking over control of the case  
13 as, let's say, his duty under the Organic Act, under  
14 the laws of Guam.

15           Here, I mean, is there a line that needs to be  
16 drawn where that stops or where it begins?

17           MR. CALVO: Yes, I think there is, Your Honor.  
18 I think what happens is that the Attorney General  
19 really on behalf of the Government of Guam enters into  
20 the lawsuit. In this particular case, had we not had  
21 this history, had the Attorney General been consulting  
22 the respondents in the case, had the Attorney General  
23 really decided I represent the Government of Guam, I'm  
24 the chief legal officer, the Government of Guam is a  
25 party in this action --

1           THE COURT: If they change those facts and say  
2 assume a situation where the parties are consulting but  
3 there are differences and opinions in terms of the  
4 representation, the defendant wants to see this case  
5 move a certain direction, the Attorney General says no,  
6 it's gotta go this way, does that scenario call for or  
7 justify independent representation?

8           MR. CALVO: I think it does, Your Honor, and I  
9 think that's the way --

10          THE COURT: Other scenario where there's that  
11 divergence of opinions as to the manner or the course  
12 which a litigation is to take?

13          MR. CALVO: When there's a fundamental  
14 divergence of opinion as to how the action should be  
15 taken, or what action should be taken, and it really is  
16 exercise of the authority and the discretion of those  
17 public officers, the legal, the chief legal officer on  
18 one hand, the Attorney General, and the Governor on the  
19 other side, I think that it requires that there be  
20 representation that litigates those issues or gets it  
21 before the Court so the Court, as you've said in your  
22 opinion in the Superior Court, Your Honor, determines  
23 what is the public interest, what is right. But, the  
24 Governor cannot not act. I mean, he has a duty that is  
25 as high, or if not higher than the Attorney General's,

1 to the people of Guam, a duty that has --

2 I'm sorry, Your Honor.

3 THE COURT: Well, see, it seems to me that the  
4 AG's opinion here is that, well, you really don't care  
5 if you retain independent counsel just as long as it's  
6 not government funds that are paying for it, I think is  
7 their position. Because when it comes to government  
8 funds and representation by the government, it's the  
9 Attorney General that's supposed to provide that  
10 representation.

11 MR. CALVO: I'm not -- I don't think it's  
12 about funding, Your Honor. I mean, if it's about  
13 funding, that's wrong. We disagree. The Governor is  
14 acting in his capacity as the chief executive officer  
15 of the island of Guam.

16 THE COURT: All right. But in terms of the  
17 non-constitutional officers, what prevents the  
18 Governor's Office from undertaking the positions that  
19 these two directors advocate?

20 MR. CALVO: Those directors fall under his  
21 authority because they're in the executive branch, Your  
22 Honor.

23 THE COURT: So what prevents the Governor from  
24 undertaking their representation, so that they're not  
25 required to resort to an emergency certificate to get

1 emergency procurement services?

2 MR. CALVO: I think it was a matter of the  
3 need for independent counsel, Your Honor. I mean,  
4 arguably --

5 THE COURT: That's what I'm saying. If they  
6 are part of the executive, and if the Governor is the  
7 head of the executive, why can't we say that there  
8 needs to be provided legally by the Governor's Office  
9 as opposed to going out and retaining counsel  
10 independently?

11 MR. CALVO: Well, ultimately it is through the  
12 Governor's Office, if they're part of the executive  
13 branch', it's just that they needed independent counsel  
14 to represent them in this matter. And quite frankly,  
15 the barn was on fire, there was an emergency. There  
16 were court filings being made, there were accusations  
17 being launched, and there was action being taken, and  
18 these officials as well as the Governor had to take  
19 action.

20 THE COURT: I guess my question really is  
21 this. What prevents you from providing that  
22 representation as opposed to another attorney?

23 MR. CALVO: My feeling is that we could, Your  
24 Honor. But I don't think that having another attorney  
25 working on the matter actually representing Mr. Ilagan

1 and Ms. Perez is inconsistent. This is an undertaking  
2 that I think has to have the resources to get  
3 accomplished and to represent the parties the right  
4 way. But I think that, you know, theoretically, Your  
5 Honor, and legally, we could provide representation to  
6 parties within the executive branch under these  
7 circumstances. I just don't think it's necessary.

8 THE COURT: It just seems to me that the  
9 authority to authorize independent counsel seems to be  
10 more reasonable and more logical as it applies to the  
11 Governor, the head, than as opposed to officers that  
12 are not constitutional, and on the same level as the  
13 Attorney General.

14 MR. CALVO: Well, as you know, in government,  
15 Your Honor, there wasn't a typhoon, there wasn't an  
16 earthquake, but oftentimes within the executive branch  
17 there is the need for counsel, and sometimes it can't  
18 be handled by one office. I don't think there's  
19 anything inconsistent with our position that they have  
20 other counsel. But I don't think there's anything that  
21 would prevent us from representing those other  
22 respondents in this matter, Your Honor.

23 THE COURT: Could there be a potential  
24 conflict, being that they're both subordinates of the  
25 Governor?



1 MR. CALVO: I don't believe so, Your Honor.

2 THE COURT: Okay.

3 (Pause.)

4 THE COURT: You know, another question that  
5 perhaps interests me, Mr. Calvo --

6 MR. CALVO: Yes, Your Honor.

7 THE COURT: If you're asking to -- Well, it  
8 seems to me you're asking that you be authorized to  
9 formally enter the litigation and file papers on behalf  
10 of the Governor.

11 MR. CALVO: That's correct, Your Honor. We're  
12 asking you --

13 THE COURT: Are you asking for exclusive  
14 representation in that regard, or can there be  
15 co-existence with the Attorney General?

16 MR. CALVO: Quite frankly, Your Honor, had  
17 there not been this history in this case in the  
18 Attorney General representing the Governor, and I was  
19 really thinking about this over lunch time, Your Honor,  
20 I think that -- I think that we have to represent the  
21 Governor. The Governor cannot be represented by two  
22 parties, especially if they're adverse. I think we saw  
23 the exhibition today, and quite frankly, I'm sure that,  
24 you know, that's not the way to proceed or how the  
25 Court would want us to proceed with the litigation.

1 THE COURT: (Inaudible.)

2 MR. CALVO: The Governor -- I'm sorry, Your  
3 Honor.

4 We're not saying that we represent the  
5 Government of Guam, you know, that's --

6 THE COURT: I'm just saying that in terms of  
7 other parts of this case where there's no dispute  
8 between the Attorney General and the Governor, why  
9 would it be necessary that you undertake legal matters  
10 in that regard as opposed to the Attorney General?

11 MR. CALVO: I don't think that the case can be  
12 divided that way. We're dealing with a pretty  
13 intertwined legal matter now when we're talking about a  
14 settlement agreement and the implementation, and the  
15 very lawfulness of the agreement that the Attorney  
16 General has opined on one hand is legal; on the other  
17 hand, has informed the Governor and the other  
18 respondents is unlawful. So I don't think that in a  
19 case --

20 I mean there might be conceivably a case in  
21 the future that has clear lines and clear divisions  
22 where you can have independent counsel for the Governor  
23 and the Attorney General involved in the case on  
24 discrete separate issues so that you can assure  
25 yourself that there aren't any conflicts and there

1 are no inconsistent positions and that we're working  
2 together. That's not this case. We're way past that,  
3 Your Honor.

4 THE COURT: So on this case, are you then  
5 asking the Court that the Attorney General not have any  
6 part in the litigation of this case?

7 MR. CALVO: Quite frankly, Your Honor, what we  
8 were thinking, especially after this morning, is that  
9 we would bring a -- if the Court finds that we should  
10 enter the case, which we think the Court, you know,  
11 should, and we're counsel for the Governor, we were  
12 contemplating bringing a disqualification motion based  
13 upon Rule 1.9, because former counsel, as former  
14 counsel for the Governor, the Attorney General is  
15 disqualified from proceeding adverse to the Governor in  
16 the same matter, or in a substantially related matter.  
17 In this case, it's the same matter.

18 THE COURT: Let me see if I understand. What  
19 did you say again, that you're thinking of filing a  
20 disqualifying --

21 MR. CALVO: Your Honor, if we're allowed to be  
22 entered in this case as counsel for the Governor, that  
23 means that the Attorney General is former counsel for  
24 the Governor.

25 THE COURT: Well, that's assuming that the

1 case -- the court says that you are the Governor's  
2 representative.

3 MR. CALVO: That's right.

4 THE COURT: Exclusively.

5 MR. CALVO: Yeah, assuming that that's the  
6 case. In other words, if our notice in the order is  
7 signed allowing us to substitute in, I think, into the  
8 case, then the Attorney General is former counsel for  
9 the Governor, still counsel for the Government of Guam,  
10 but former counsel to the Governor in this care.

11 THE COURT: So are you saying that in terms  
12 of the litigation, the Attorney General has no voice at  
13 all in terms of directions in terms of which this case  
14 is moving?

15 MR. CALVO: I think that the Attorney General,  
16 Your Honor, is in violation of the Ethical Code. And  
17 I know there's some issue as to whether or not the  
18 ethical code is something that the Attorney General has  
19 to care about, but I think fundamental due process  
20 requires that we at least, you know, look at whether or  
21 not there's a violation of the Ethical Code under Rule  
22 1.9 of the Ethical Code, regarding former clients.

23 THE COURT: But in the interest of -- in the  
24 public interest, these ethical considerations have been  
25 waived. So that in determining the -- in determining

1 the interests of the government, what is in the best  
2 interests of the government, the Attorney General can  
3 do that irrespective of what the Governor -- Governor's  
4 direction is.

5 See, I'm concerned that the Governor will say,  
6 this is the case, assuming they let you in, this is the  
7 case, this is the scenario, this is the direction that  
8 this case is going to take, and then prevents the  
9 Attorney General from coming in and saying no, from a  
10 legal point of view, this is where it should go.

11 MR. CALVO: I think that's different, Your  
12 Honor. I think at the outset of this case, if the  
13 Attorney General and the Governor would have consulted  
14 and they would have worked together to determine  
15 whether or not they were on the same page -- or let's  
16 say the settlement, which is really where there was  
17 divergence ultimately, if they were on the same page,  
18 then there wouldn't be any need for independent  
19 counsel.

20 THE COURT: But they're not on the same page.

21 MR. CALVO: They're not on the same page.

22 THE COURT: And for purposes of this court,  
23 you know, I mean, see, it shouldn't have the Governor  
24 as the exclusive voice of what is in the public  
25 interest, just as it shouldn't have the Attorney

1 General as the exclusive voice. Those voices have to  
2 be heard. So if I put you in, that means that the  
3 Attorney General's voice is never heard in terms of the  
4 direction of this case.

5 MR. CALVO: Well, I think that, Your Honor --

6 THE COURT: So you're asking that they not be  
7 part of this case.

8 MR. CALVO: No, I think what happened is, I  
9 think there are two voices and the two voices should be  
10 heard. I think that unless the court is going to  
11 exempt the Attorney General from the Ethical Rules,  
12 under Rule 1.9 in a litigation matter or in a  
13 substantially related matter, a former counsel cannot  
14 represent an interest adverse to a former client. In  
15 this case, the former client would be the Governor of  
16 Guam. And the Attorney General is clearly adverse to  
17 the Governor of Guam. And the Governor of Guam falls  
18 broadly within the rule. The question is whether the  
19 Court is going to exempt the Attorney General from that  
20 rule.

21 I think logically, if you play it out, because  
22 I think it's important that that second voice be heard,  
23 the Government of Guam be heard, is that they be -- the  
24 Attorney General gets special counsel to represent the  
25 Government of Guam in the matter, since at this point

1 there seems to be divergence of where the Government of  
2 Guam thinks we are with the settlement and what the  
3 Governor thinks with respect to the settlement.

4 So the question is whether or not the Attorney  
5 General is exempt from the Ethical Rules that bind  
6 other attorneys.

7 THE COURT: Well, there are some cases that  
8 say they are exempt.

9 MR. CALVO: I think that some cases say they  
10 are, I think a good instructive case is the Duekmajian  
11 case which the Court is familiar with. In that case,  
12 the Attorney General represented the parties and the  
13 Governor in the matter, then withdrew, and then sued  
14 those parties. The Court in that case determined,  
15 based upon the California statutes and I think the  
16 Ethical Rule 1.9 or its counterpart in California,  
17 that he could not do that, that was inappropriate.

18 This is different than the Camacho Moylan  
19 case, or the Moylan Camacho case which Your Honor  
20 decided as a Superior Court judge. In that case there  
21 wasn't a representation, then a withdrawal, then  
22 entering into the matter. They were adverse from the  
23 outset. 1.9 governs the conduct of a former attorney  
24 with respect to his client or her client on a  
25 substantially related matter. And in this case the

1 exact same matter.

2 If it pleases the Court, I know this is -- and  
3 I didn't mean to spring this on Your Honor at the last  
4 moment, and we have not made the motion because we  
5 don't want to get ahead of ourselves, but if the court  
6 were to find it appropriate and order that we enter the  
7 case on behalf of the Governor, we'd be happy to brief  
8 this issue, and, you know, consider filing the motion.

9 THE COURT: All right.

10 MR. CALVO: Nothing further, Your Honor.

11 THE COURT: Mr. Mantanona?

12 MR. MANTANONA: Yes, Your Honor.

13 Afternoon, Your Honor. At the outset, we'd  
14 like to adopt and join in the same arguments with Mr.  
15 Calvo at this point on behalf of the state officers.

16 The Court makes a distinction at this point in  
17 regards to the differences or potential differences  
18 between the Governor of Guam and state officers. But,  
19 nonetheless, Your Honor, those state officers are  
20 parties in a major lawsuit which involves the  
21 settlement of 60 million dollars.

22 Further, the position in which --

23 THE COURT: Well, my only question was whether  
24 their interests being in the executive could be  
25 undertaken by counsel for the Governor, being that



1 they're part of the executive branch.

2 MR. MANTANONA: Your Honor, in certain  
3 situations I believe that that would be so. And until  
4 this situation, or unless the parties get dismissed  
5 out, they are named defendants, and as such they are  
6 entitled to separate representation at this point.

7 Counsel, Your Honor --

8 THE COURT: (Inaudible.) Separate?

9 MR. MANTANONA: Separate from the Governor at  
10 this point, since they are named defendants.

11 THE COURT: What makes -- I mean, why can't we  
12 take the argument further and say that you can't  
13 represent both -- (inaudible) -- one or the other?

14 MR. MANTANONA: (Overlapping.) Well, Your  
15 Honor, at this point there is no conflict between the  
16 two. And, in fact, at this point there probably isn't  
17 a conflict with the Governor's Office at this point.  
18 But these are people that the court stated are state  
19 officers, directors of departments, they are entrusted  
20 with the day-to-day responsibilities of doing the  
21 governmental actions to implement the plan proffered by  
22 Mr. Phillips and his client.

23 Your Honor, one point I would like to point  
24 out is that even if I come in on behalf of Mr. Ilagan  
25 and Ms. Perez and the Calvo firm comes in on behalf of

1 Governor, the Attorney General's Office still  
2 represents the parties in this action, so they will not  
3 be moot unless Mr. Calvo decides that it would be  
4 appropriate to make a motion to disqualify them. They  
5 still will have a voice, theoretically, in this case.

6 Your Honor, as parties in such a case, the  
7 defendants are entitled to due process. Basically,  
8 this settlement was done while one of the parties was  
9 off island, the other party was basically forced into  
10 signing this agreement, and at this point, as later  
11 it's been reviewed, it shows that the settlement as  
12 proposed is causing severe problems and conflicts.  
13 First of all, Your Honor, on behalf -- it is the  
14 Attorney General's opinion that there are illegal  
15 appropriations in this matter, and there hasn't been  
16 any advice on their behalf to their alleged clients  
17 on what to do. At the same time --

18 THE COURT: Do the defendants have to ask?  
19 Have they sought perhaps direction on what to do or  
20 not?

21 MR. MANTANONA: Your Honor --

22 THE COURT: Is that necessary? It seems like  
23 the Attorney General is saying, well, you haven't gone  
24 the additional step to ask for direction.

25 MR. MANTANONA: I think the judicial step is

1 they haven't spent any money yet. But we're looking at  
2 a situation, Your Honor, where one party is going to be  
3 required to make a payment of 20 million dollars and  
4 which would violate the -- (inaudible) -- but at the  
5 same time, but at the same time, if she does not do  
6 that act, and complies with the law, then she's in  
7 violation of this court's order and could be held in  
8 contempt.

9 THE COURT: But can't you certainly come to  
10 court and say, well, they shouldn't be held in contempt  
11 because these provisions of the settlement agreement  
12 are not legal.

13 MR. MANTANONA: Well, Your Honor, I think that  
14 it behooves the attorney who represents them to take  
15 that position to protect their client. And we do not  
16 believe the Attorney General's Office has taken the  
17 necessary precautions to protect the interest -- no  
18 offense to Mr. Cohen or Mr. Weinberg -- but my clients  
19 are swinging in the wind. They're swinging, they don't  
20 know which way to go. Why? Because now they're in a  
21 situation that they need to get somebody who can give  
22 them straight advice, somebody that can tell them,  
23 well, this is the settlement agreement, we've already  
24 agreed to this, you've already agreed to this, you guys  
25 signed it, but no one is letting them speak to the

1 court, no one is addressing their concerns, no one is  
2 telling the Courts about this shortage of money, the  
3 inability to make these payments.

4 The interest penalties that will accrue if  
5 this plan is being implemented, none of that has been  
6 addressed. Those voices, the voices of the parties  
7 are being silent in this court, they are being gagged,  
8 as co-counsel opined; they're being hijacked, they're  
9 being set moot. That is not the role of defendants,  
10 and that is not in compliance with their rights as  
11 parties.

12 THE COURT: You know, there's a statute that  
13 affects the Attorney General that says that they have  
14 cognizance over all agencies, and I guess autonomous  
15 agencies, and it goes further on and says that  
16 autonomous agencies -- or agencies that are authorized  
17 to hire counsel may do so. Now, how would that affect  
18 let's say the individual that you purportedly  
19 represent?

20 MR. MANTANONA: Well, Your Honor, at this  
21 point, these -- as far as I can tell, these two  
22 departments are not autonomous agencies, they're line  
23 agencies.

24 THE COURT: And is there anything in the  
25 statute that authorizes them to have counsel other than

1 the Attorney General?

2 MR. MANTANONA: I think at this point, no,  
3 Your Honor. But --

4 THE COURT: And is there anything in their  
5 budget that gives them appropriations to hire an  
6 attorney?

7 MR. MANTANONA: Your Honor, at this point  
8 I would have to say that I'm not familiar with the  
9 appropriations of either of the Department of Revenue  
10 and Taxation or the Department of Administration, and  
11 I apologize to the court for that ignorance.

12 But my point, Your Honor, is that in  
13 situations and in courts there are decisions that are  
14 contained in my brief that states that when there are  
15 roles of conduct that apply and that --

16 THE COURT: Let's assume that everything you  
17 say is true, all right. And let's assume that the  
18 budgets, the budgets for these agencies specifically  
19 provide none for, let's say, the retention of  
20 independent counsel.

21 MR. MANTANONA: Yes, Your Honor, and that is  
22 why my clients have, have sought the assistance of the  
23 office of the Governor to advise them to get counsel;  
24 they have their own counsel, they work with the  
25 Governor, see whether there is an opportunity for them

1 to get separate counsel in this matter.

2 THE COURT: And funding from a source other  
3 than their department, is that what it is?

4 MR. MANTANONA: Yes, Your Honor, I believe  
5 that actually the funds for my contract I believe are  
6 being paid for by the office of the Governor.

7 THE COURT: Okay, I see. That's what I wanted  
8 to see really, whether in their budgets the Department  
9 of Revenue and Taxation, Department of Administration,  
10 they have budgets that allow them to hire attorneys  
11 from funds that are appropriated to those agencies.  
12 And you're saying no, these are budget -- your funding  
13 comes from the Governor's Office budget.

14 MR. MANTANONA: Your Honor, my point being  
15 like in Chun versus Board of Trustees, the Hawaii  
16 case, the Court stated that in situations -- that it  
17 recognizes that the mechanical parts of the rules of  
18 professional conduct do not apply to the Attorney  
19 General, which is the position proffered by  
20 Mr. Weinberg. But in that case, which is really clear  
21 on this issue because it's really helpful, it states  
22 that the rules of conflict do apply, and that when  
23 there is an ability to get separate counsel, the  
24 Attorney General should allow those parties, those  
25 state officers to get separate counsel. That's all

1 we're asking, Your Honor.

2 THE COURT: Let's assume the Attorney General  
3 says no. Are you going to ask the Court to order the  
4 Attorney General to appoint independent counsel?

5 MR. MANTANONA: No, Your Honor. We believe  
6 that since there is a conflict with the position of the  
7 Attorney General, that the Attorney General is not the  
8 proper party to, to select alternative counsel, because  
9 the positions are totally adverse. The positions of  
10 the director --

11 THE COURT: Are you saying also that the  
12 Attorney General doesn't need to come to the same  
13 conclusion that your clients have come to in order for  
14 this process to move forward?

15 MR. MANTANONA: Well, Your Honor, no. In  
16 fact, in my moving papers, substitutions were sent to  
17 Mr. Weinberg, and to the Attorney General, letters  
18 explaining, letters requesting for my client the  
19 substitution. In fact, the Court when I filed the  
20 first objections, your court stated that we can't  
21 address these until substitution of counsel is  
22 submitted pursuant to Rule 19.1. And in fact, those  
23 issues were raised by Mr. Cohen in his motion to  
24 strike.

25 So to avoid any problems, we did the formal

1 procedures of soliciting, notifying and asking for the  
2 substitution. The Attorney General sent his opinion  
3 said, no, I'm not going to do, I'm not going to waive  
4 that right, I'm not going to do so. The Attorney  
5 General is superman, he can take and he can do  
6 everything. That, Your Honor, is a wrong position.  
7 Case law doesn't support that one hundred percent. The  
8 case and the law in Guam is still undefined.

9 But more importantly, Your Honor, more  
10 importantly, to do so would basically state that nobody  
11 in this government has another opportunity or an  
12 ability to get separate counsel unless the Attorney  
13 General agrees. And that's wrong. Because to do so  
14 would basically throw away two hundred, three hundred  
15 areas of law which basically states the defendants and  
16 parties in interest have due process rights to be  
17 represented, and that their counsel protect and address  
18 their interests.

19 And if there is in this basic case, Your  
20 Honor, this is the basic core of American law, if there  
21 is a conflict in positions, then they are entitled to  
22 get separate or different counsel, which will do their  
23 attorneys due diligence and responsibility and protect  
24 and represent those clients to the full of ability.

25 We do not believe that the Attorney General at

Wanda M. Miles  
Official Court Reporter  
District Court of Guam



1 this position in support of the settlement agreement  
2 can adequately address, or has not adequately addressed  
3 those questions, those problems that are addressed by  
4 our client. They're just told basically, you know, do  
5 what we tell you to do, and if something happens to  
6 you, that's -- that's your problem. We can't -- Your  
7 Honor, that is not what the American juris system is  
8 all about. The American juris system is about, you  
9 know, everyone having an opportunity to be heard in  
10 court, and that it is the Court to make the  
11 determination.

12 And we are asking this court, pursuant to  
13 Rule 19.1 to -- for a designation of counsel, because  
14 the substitution was refused. So, we have put the case  
15 before the Court, we've asked, we've shown the Court,  
16 we've complied with the rule, we've shown there's a  
17 basis, that there is a definite conflict between the  
18 parties that are not being addressed, and there's a  
19 desire from the clients, there is a lack, basically,  
20 Your Honor, of faith, and confidence in the  
21 representation of the Attorney General's Office in this  
22 matter on behalf of Ms. Perez and Mr. Ilagan. That  
23 alone, Your Honor, that alone calls for a substitution,  
24 or allows them to have adequate representation in this  
25 matter, which we believe is a very serious matter

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 before the territory.

2 THE COURT: If the Attorney General changes  
3 his position tomorrow and says we wholeheartedly agree  
4 with the position of Ms. Perez, and your clients, then  
5 where does that leave your position?

6 MR. MANTANONA: Well, I think that he's going  
7 -- you may have a very big problem with the settlement  
8 agreement which he's entered into. I don't think that  
9 the Attorney General can actually change his position,  
10 Your Honor. It's already been done, the dye is cast;  
11 his position is one, his position is two, and they are  
12 not able to join. And at this point we're just asking  
13 for separate counsel.

14 Your Honor, in fact, besides the fact that  
15 there's no confidence, there is no, no feeling of  
16 security on behalf of the representation, it has gone  
17 beyond that, it's confrontational. Mr. Phillips, if I  
18 may, made a very pointed statement to me, that "I can't  
19 believe you put your client on the stand; how could you  
20 do that?" I didn't do it, Your Honor; the government  
21 did. They subpoenaed their own clients, and they put  
22 them on the stand to put on evidence. It's something  
23 that I, when I tried to examine them, limited it to a  
24 few questions, because I understand Mr. Phillips's  
25 position, that is wrong. I'm not doing my duty by

1 questioning my own client on the stand, to opening them  
2 up, to exposing them to positions in which Mr. Phillips  
3 can bonk me on the head with later. But, the AG  
4 believes that it's proper, and they did so, and put  
5 them up there and went into questions of privilege,  
6 went into questions of relevance.

7 Your Honor, I have never seen a case that  
8 calls more for separate and new counsel to protect the  
9 interests of the administrative officers, these state  
10 officers, and it's not an unprecedented situation.  
11 There's other cases in this government where an AG  
12 didn't object to separate counsel for these parties.  
13 In fact, the case they mentioned was the representation  
14 of the eviction case. So it's not unprecedented, and  
15 it's not the AG won't agree, but it won't agree in this  
16 case.

17 Your Honor, I think that this court in such an  
18 important case, with so much at stake to the poor of  
19 this island, to the taxpayers of this island, in fact  
20 to the people of this island generally, on the fair  
21 administration of the government, and more importantly  
22 the viability, the sustained viability of this  
23 government, it needs to make sure that all parties,  
24 including my clients, are heard.

25 Thank you, Your Honor.

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 MR. PHILLIPS: Your Honor, may I be heard?

2 THE COURT: Mr. Phillips, you've sat  
3 patiently, sir. The court will hear you.

4 MR. PHILLIPS: Thank you very much, Your  
5 Honor. May it please the Court.

6 Your Honor, there's one thing I think I've  
7 been told more by judges than anything else in my  
8 career of doing public interest law, and that is,  
9 "Mr. Phillips, if you don't like the law, change the  
10 law." And I think that's what we have here, Your  
11 Honor, we have a testimony, a lot of it for reasons why  
12 we might want to change the elected Attorney General  
13 law.

14 Without giving an opinion on it, I will say,  
15 Your Honor, I think everyone here will agree that when  
16 that law was passed, a lot of people had strong  
17 concerns. I remember myself chairing a gubernatorial  
18 campaign and having a number of gubernatorial  
19 candidates saying: "This isn't the big contest, the big  
20 contest is who's going to be elected AG, because that's  
21 going to be the most powerful government official in  
22 Guam." And I think that's what we have here with  
23 regards to the AG at times deciding someone else can  
24 represent the government or the AG. Well, that's the  
25 AG, and if he's able to handle all of that himself

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 under law, then he's also able to delegate it. So I  
2 think that's a little bit circular, Your Honor. The  
3 fact that he's done it before means that he has the  
4 authority to do it, I'm not denying that.

5 But, just to correct, or maybe not to correct,  
6 Your Honor, but to add a few points to some of the  
7 statements that were made and then I'll make my very  
8 quick points and get off. Your Honor knows in civil  
9 cases and events like this, individual clients are not  
10 entitled as a matter of due process to have counsel  
11 provided for them. The big, big difference.

12 Sometimes, and I think Mr. Mantonona will  
13 agree with me on this, we're not even satisfied in  
14 criminal proceedings that the state does enough for  
15 criminal defendants, and that's where that applies.  
16 Does that mean that people can't go out and hire an  
17 attorney on their own. That's a different question,  
18 Your Honor, because that's a question that goes to the  
19 individual representation, not the representation of  
20 government. Everybody has been sued in their official  
21 capacity, so that's different. But I again think that  
22 that's a misstatement, that not everybody is allowed  
23 counsel of their choice, whether they can find the  
24 funding or not. I question whether or not there's a  
25 little bit of a conflict here that the Governor's

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 Office aside from paying for four or five attorneys  
2 here, is now paying for at least one other attorney  
3 that's representing separate parties.

4 Your Honor, another misstatement, and I think  
5 after you read something in the PDN a number of times  
6 you start to believe it as -- The Governor never  
7 testified that he was unaware of this agreement. In  
8 fact, I seriously doubt the Governor would take the  
9 stand and swear under oath that he was unaware of  
10 either the negotiations or the settlement agreement.  
11 In fact, Your Honor, Mr. Calvo testified -- or didn't  
12 testify, excuse me -- represented to the court the days  
13 that the Governor returned and when things were done.  
14 In actuality, Your Honor, this was entered into later  
15 on during the week.

16 And again, it's a small technicality, but a  
17 little bit of a misrepresentation; number one, that  
18 the Governor didn't know, and number two, that when he  
19 returned it was all over. It wasn't.

20 In fact, we didn't get before Your Honor for  
21 a few days. I doubt Your Honor has any specific  
22 recollection of this case, but we had requested a  
23 settlement conference on a Monday, the date that the  
24 Governor was scheduled to return, but Your Honor said  
25 come in later on in the week. I believe we came in on

1 a Thursday, maybe four days later. The Governor was  
2 already on Guam. The Governor was in the loop. The  
3 Governor, if he testifies, will go down a whole litany  
4 of facts, Your Honor, that I think will support  
5 everything I'm saying.

6 But more importantly, he did not testify,  
7 there's no evidence before this court that he was  
8 unaware of the settlement agreement, so I would ask  
9 that the court not consider that.

10 With regard to the separation agreement, Your  
11 Honor -- or excuse me -- the settlement agreement, the  
12 concern that one of the parties has is that, well, they  
13 don't have an appropriation for the moneys that's  
14 supposed to be spent. But they never mentioned, Your  
15 Honor, that in the settlement agreement it specifically  
16 refers to existing resources. It doesn't call for  
17 anything new, it doesn't call for anything extra.

18 In the administrative plan, Your Honor, that  
19 we submitted, and it's really supposed to be the  
20 purpose of the hearing, we were asked by the Department  
21 of Revenue and Taxation, for whatever reason, because  
22 we never had any problems, we were discussing things  
23 openly with them all the time, could you please put  
24 that in; we said no problem, we didn't ask them for any  
25 justification. We didn't even ask them why, we said

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 fine, you want it in, whatever you guys want in, we'll  
2 put in. And that's pretty much, Your Honor, what built  
3 the administration plan, that's it, it's the plan of  
4 administration; and it's a joint effort by all the  
5 parties that wanted to participate, and everybody was  
6 allowed to contribute. I don't remember a dispute on  
7 anything. Comes a surprise that after we filed it,  
8 there were a couple of suggestions or objections. And  
9 I think they're meaningless, Your Honor, whether, for  
10 example, the Department of Administration handles it or  
11 Rev and Tax as it's called for in the agreement, it's  
12 really not substantial.

13 But with regard to that, Your Honor, there's  
14 nothing unconstitutional there, there's nothing in  
15 reality for the Governor to fear, there's nothing  
16 involved, there's no basis in that.

17 With regard to additional payments that don't  
18 go towards the payout of the 60 million, well, of  
19 course everything goes towards the payout of the 60  
20 million. There's nothing else. It all goes towards  
21 that, that's the only thing that money can be spent on.  
22 And so it's just not relevant, Your Honor.

23 But what's interesting, Your Honor, is if we  
24 continue down this path and we say, okay; well, what if  
25 the Governor is doing something that, you know, his



1 secretary his law clerk, or in this case his legal  
2 counsel, or others feel is in violation of law, they  
3 just stop and say, I want separate counsel. You can't  
4 do that, Your Honor, you can't do that. The forum  
5 here, the proper forum I think for this issue, is not  
6 in this case. Mr. Calvo had some trouble getting his  
7 contract signed. Don't come here and complain about  
8 it. I would suggest, Your Honor, you bring a writ.

9 If they're saying that under law their clients  
10 are entitled to specific performance or to declaratory  
11 judgment, or to a specific act, then there's no  
12 question about it, then I would suggest, respectfully,  
13 maybe file a writ of mandamus and have the Court say,  
14 hey, you start signing those contracts, or from now on  
15 when you're presented a contract from the Governor, you  
16 have 48 hours to sign it. Something, everything, some  
17 effort. Nothing, absolutely nothing. They show up in  
18 court and they say, we want to take over, and we want  
19 to represent the government. And that's the problem,  
20 Your Honor. And it's nothing personal against anybody,  
21 not even personal against the Governor, it goes back to  
22 the law.

23 If there's a problem, there's a problem with  
24 the law, and if there's a remedy, then number one, you  
25 change the law, if you think you're correct under the

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 law, then go to court and file appropriately.

2 And it is very similar to the subpoenas. It  
3 appears to me that counsel did the right thing. They  
4 said that they're baloney, they're all wrong, don't  
5 worry, we'll win, but you better show up in court just  
6 to make sure, in case we don't. So they advised their  
7 clients properly, and that is, follow the subpoena  
8 until such time as it's quashed. It was never quashed.  
9 And that's the difference here. Until such time as the  
10 law is changed or such time that in the proper  
11 proceedings there's some kind of overall determination  
12 as to who controls the litigation in the government,  
13 until that happens, Your Honor, I respectfully suggest  
14 that we follow the law. And right now the AG is in  
15 charge, that's the way it is.

16 I think, again all kidding aside, I think we  
17 can take judicial notice that if there's one law that  
18 people discuss about changing, it's the elected  
19 Attorney General law, and that's because in fact it's  
20 created somebody that's properly on par with what  
21 Congress created in the Governor when they passed the  
22 Organic Act in 1950. Super powers, I mean there's no  
23 question about it. But that doesn't mean they're not  
24 there. And until somebody finds it unconstitutional,  
25 and they're not asking for that, this would not be the

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 forum, then it stands and it's very difficult.

2 Secondly, Your Honor, I think the Court should  
3 take note that the only reason for this, nothing  
4 compelling, the only reason is what Mr. Mantanona said,  
5 and that is, he said that, wait a minute, the AG's a  
6 signator to that settlement agreement, they can't back  
7 out now. So is the Governor, so is the Director of  
8 Administration, so is the Director of BBMR, the  
9 Director of Revenue and Taxation, everybody is a  
10 signator. Nobody has done anything, nobody complained,  
11 nothing, no events of anything. Then all of a sudden  
12 they all decide to change their mind. As Mr. Manglona  
13 (sic) said, well, somebody is swinging, or something,  
14 and they're left out in the open.

15 Well, again, the only purpose is to get out of  
16 the agreement. There's been no testimony, no evidence  
17 of anything else other than we want out of the  
18 agreement because we have concluded outside of the  
19 advice of the AG that it's illegal.

20 And so we've decided that even though the  
21 Court signed off on it, even though there's going to be  
22 a fairness hearing, even though with the backing of the  
23 Attorney General, with the backing of plaintiff and  
24 interim counsel, they all say it's okay so far, we feel  
25 that we've concluded, and maybe to some extent with

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 advice of counsel, it doesn't appear that they had  
2 counsel earlier on. Your Honor, they were concluding  
3 these things on their own, that it's illegal and that  
4 justifies us coming here today and deciding to back  
5 out.

6 But, Your Honor, that's the only reason  
7 they're here. This is not a writ proceeding or  
8 anything that is intended to set the tone for exactly  
9 where the AG sits in our government or anything like  
10 that, like it should be. That's really the forum where  
11 it should be discussed. They're here for one reason:  
12 Somebody along the way decided a long, long way along  
13 the way, that they wanted to back out of the agreement.  
14 And really, Your Honor, it sounds to me like the one  
15 and only reason they have seems to be money. And you  
16 know, I think we all can take judicial notice that that  
17 ain't going to go very far. They're saying, well, I  
18 can't afford it. You know, tell me about it. All of  
19 us can't afford anything.

20 And so, Your Honor, with that being the sole  
21 purpose -- and really just one other small point, Your  
22 Honor.

23 I represented the elected school board at the  
24 time before the Attorney General had what I refer to as  
25 super powers, and I was surprised, Your Honor, because

1 I thought because the elected school board had a  
2 provision that provided for the board to hire its own  
3 attorney, I thought that was my license into court, and  
4 I learned very quickly from Judge Gatewood at that time  
5 that it was not. And in fact, she was very inclined to  
6 allow the AG to go ahead and do what it's supposed to  
7 do, represent the government, and she very clearly  
8 distinguished between the board hiring counsel and  
9 counsel representing a government entity in court.

10 But her exception, the one exception was in  
11 that case the government entity was under attack and  
12 under attack by the AG, and because its existence was  
13 threatened, she found an exception, and I don't think  
14 the AG fought it very, very hard, and allowed us to  
15 represent the elected school board. That's prior to  
16 the super powers, Your Honor, that's prior to the AG  
17 being promoted, and given all the powers that he has  
18 today. But even that, it was a very, very close call,  
19 to my surprise, and I never forgot the lesson.

20 But in any event, Your Honor, unless there's  
21 any questions, I'll submit on that.

22 THE COURT: Are you saying that under no  
23 circumstances can a government official be not  
24 represented by the Attorney General?

25 MR. PHILLIPS: No, Your Honor, I'm saying

1 under the current law when the Attorney General is in  
2 control of litigation, then he, he decides that. That  
3 doesn't mean that the individual cannot make  
4 representations to the court, as we did that day at the  
5 settlement conference, Your Honor. Everybody but the  
6 media was there, and we all participated, everybody was  
7 free to speak, and -- I'm sorry, go ahead.

8 THE COURT: Isn't it generally true when the  
9 parties go with the attorneys, you don't allow the  
10 parties to speak, we allow their attorneys to speak on  
11 their behalf?

12 MR. PHILLIPS: Yes, Your Honor, and at the  
13 same time, the attorney has an obligation to insure  
14 that the court is aware of concerns and, or questions  
15 if they rise to a certain level, that the clients have.  
16 So for example, if my advice is to go a certain way,  
17 and we're going a certain way, but I let Your Honor  
18 know that there's some concerns here.

19 In the AG's case, Your Honor, I believe that's  
20 what they did in their brief, and again, I didn't read  
21 it for this purpose, and that was a while back, but I  
22 believe they put the Court on notice that the Governor  
23 wants to back out. And so I believe that the AG, based  
24 on everything I've heard today, fairly summarized  
25 exactly the sentiments of the front office.

1           You may also remember, Your Honor, in one of  
2     the conferences we had, that I was very open, I said,  
3     hey, I heard that you guys are backing out; and the  
4     AG's office said no, it's a written agreement and we're  
5     going to stand by it. But at the same time, Your  
6     Honor, when they filed their brief with the court, and  
7     they were candid, they said the Governor has concerns,  
8     et cetera, et cetera, et cetera. I don't think there's  
9     anything wrong with the parties expressing their  
10    position, and if that's through the AG, that's fine.  
11    I think the AG could find himself or herself in trouble  
12    if somebody said, how about this, and they said, well,  
13    we're not going to tell the Court, we don't care what  
14    you say, we're going to keep it a secret.

15           The big difference between that, Your Honor,  
16    and controlling litigation in the government, under the  
17    current statute. And at this point in time, good or  
18    bad, I think he has the power to do that.

19           THE COURT: So if the Governor wants to back  
20    out and the Attorney General does not, what  
21    representation is made to the court as to that party?

22           MR. PHILLIPS: I think that's the  
23    representation, Your Honor.

24           THE COURT: That what?

25           MR. PHILLIPS: That the Governor wants to back

1 out. As the Attorney General made the representation.  
2 That's exactly, although like I said, it's been a while  
3 since I read their brief, that I remember reading that  
4 paragraph or so where he talked about the fact, or  
5 whoever wrote the brief, spoke about the fact that the  
6 Governor wants to back out now, or at least it appears  
7 that way.

8 THE COURT: All right. So again let me ask  
9 the question. If the Governor's position is that he's  
10 going to back out --

11 MR. PHILLIPS: Right.

12 THE COURT: -- does the Attorney General take  
13 that position in terms of the settlement or not?

14 MR. PHILLIPS: That's his choice, Your Honor,  
15 as the chief legal officer, under the current statute.

16 THE COURT: So he can say no, we're not going  
17 to back out?

18 MR. PHILLIPS: Under the current law, I  
19 believe that's what he can say.

20 THE COURT: And under the current law, the  
21 Governor's position then is not made known to the  
22 court?

23 MR. PHILLIPS: No, Your Honor. I think that  
24 at the very least the AG has to make the position known  
25 to the court. I don't think it's of any consequence, I



1 think it puts the Court on notice in case, for example,  
2 that's an issue of fact that the Court may feel is  
3 important that's been reported to the Attorney General,  
4 I think he has an ethical obligation to report that to  
5 the court. I think that's separate and apart from  
6 controlling litigation.

7 THE COURT: All right. But let's assume that  
8 the Governor says I want these five points to be made  
9 known to the court as the reasons that I'm objecting,  
10 let's say, to the settlement. And the AG says, well,  
11 no, I'm just going to tell them that you object to the  
12 settlement.

13 MR. PHILLIPS: Your Honor, I think there's a  
14 medium there somewhere, and like all other situations  
15 like this, especially when you're dealing with the  
16 interpretation of statute and powers, I think there's  
17 a reasonableness argument, and I think that at the very  
18 least the AG would be required to explain to the court  
19 enough that gives the Court an idea of why, as we've  
20 all discussed today, it's all out in the opening --  
21 excuse me -- all out in the open, what the objection  
22 is about. But that still doesn't take away from the  
23 Attorney General's current ability to control  
24 litigation. And so when it comes to the final say  
25 with regard to what the government's position is in

1 court, I believe, Your Honor, the current statute,  
2 that's reserved to the Attorney General.

3 THE COURT: So the government's position need  
4 not necessarily be the Governor's position.

5 MR. PHILLIPS: That's correct, Your Honor. In  
6 legislation, in Your Honor's court before when you were  
7 at the Superior Court, and a number of other places,  
8 including the Attorney General's Office.

9 Another good example, Your Honor, remember,  
10 because I was representing the speaker at that time, we  
11 were brought into chambers here and all consulted  
12 regarding, you know, the landfill issues and the  
13 Waterworks, and the AG made the decision and everybody  
14 followed it. And that's just the way it went; the  
15 speaker never supported that. They got nothing from  
16 the Legislature. They went off and did it on their  
17 own. And that's the way the ball bounces. Your Honor  
18 understood exactly what the AG's powers were. Nobody  
19 said, "Mr. Phillips, what do you think?" I mean, they  
20 did it in a roundtable discussion, and the judge  
21 understood that there were concerns from the  
22 Legislature, but, and the very end they didn't say  
23 "Mr. Phillips, what's your decision?" They said  
24 Attorney General what's your decision, and that's the  
25 way it went. And that's the way it went for the

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Official Court Reporter  
District Court of Guam

1 landfill, that's the way it went for Waterworks. I  
2 believe, Your Honor, if I'm not mistaken, that's even  
3 the way it went back in the old days with the DOC civil  
4 rights cases. I mean, that's the just the way it is,  
5 at certain point in time someone has to be the boss.

6 THE COURT: We're now in the new days.

7 MR. PHILLIPS: Now it's even worse. The  
8 Attorney General is even more powerful.

9 THE COURT: Okay. Thank you, Mr. Phillips.

10 MR. PHILLIPS: Thank you, Your Honor.

11 THE COURT: Mr. Weinberg.

12 MR. WEINBERG: I'll try and be brief.

13 Thank you, Mr. Phillips; that was -- from his  
14 perspective it was very helpful.

15 It is a question about power. It is a  
16 question of -- in fact one of the cases that we cite  
17 ex parte comes from my home state, Alabama, which is  
18 where 15 years ago I was involved in this same kind  
19 of litigation. This is growing pains for Guam is what  
20 I call it. And what you see is, as super powers,  
21 Mr. Phillips said, but it is a shift in the paradigm,  
22 in the power of paradigm, where the chunk of policy  
23 called legal policy decisions and control of litigation  
24 is removed from the Governor and put to a coordinate  
25 constitutional or Organic Act officer, the Attorney

1 General.

2 Heretofore, it was the Governor controlled the  
3 legal policy because he appointed, hired and fired the  
4 Attorney General at will. Now it is a constitutional  
5 or Organic Act official. And the power that the  
6 Governor used to have is, in respect to the control of  
7 litigation and legal decisions for Government of Guam,  
8 belongs now to the Attorney General.

9 THE COURT: Control lay in his ability to  
10 appoint or remove the Attorney General.

11 MR. WEINBERG: Part of it.

12 THE COURT: Control legal policy because he  
13 was able to appoint or remove the Attorney General.

14 MR. WEINBERG: Yes. Part of it. But, before  
15 you did not, but also what you had was, before the  
16 Organic Act amendments, you had the provision for the  
17 Attorney General as expressed by the Legislature. And  
18 the Legislature could write or rewrite or unwrite the  
19 powers and duties of the Attorney General. But now  
20 what you have is, you have it defined in the Organic  
21 Act as the chief legal officer for the Government of  
22 Guam. And before that, the Legislature could do that.  
23 So part of the arguments we're making in another case  
24 is in the example of autonomous agencies, when the --

25 THE COURT: See, basically you're saying that

1 the Guam Legislature cannot adopt a statute that says  
2 as chief legal officer of the Government of Guam, the  
3 Attorney General, has these powers.

4 MR. WEINBERG: I think -- well, our position  
5 is that they can add to the powers and duties of the  
6 Attorney General, but they cannot take away from his  
7 common law powers and duties, which historically, in  
8 the majority of jurisdictions, involves the control of  
9 litigation --

10 THE COURT: But the common law powers as  
11 provided by statute says that unless it is not against  
12 any other existing law. See, his statutory common law  
13 powers expressly is subject to another law.

14 MR. WEINBERG: By statute. But when Congress  
15 amended the Organic Act and made him chief legal  
16 officer, it took it above that, gave it super powers.  
17 But so, our position is that the Legislature cannot  
18 take away those historical common law authority to  
19 control litigation.

20 THE COURT: And is that a good policy to  
21 adopt, that the Attorney General, irrespective of  
22 whether or not what he espouses is really -- what's  
23 the word for it -- in the interest, in the governmental  
24 interest, is that good policy that he is the final  
25 word?

1 MR. WEINBERG: I think -- I think, yes. I  
2 think it's an outstanding policy, because rather than  
3 -- we heard Mr. Ilagan say something I wanted to follow  
4 up on it -- he said something about Mr., the Attorney  
5 General's interests are concerned with the taxpayers or  
6 the people, or something like that. He's not concerned  
7 about the department.

8 And what you have when individual agencies,  
9 like Department of Administration or RevTax or whoever  
10 says I need to control my own little fiefdom, I need  
11 to protect my finances, I need a different lawyer who  
12 won't -- who will do what I tell him to do, is you have  
13 a multitude of legal policies running around. You do  
14 not have, is it one coherent legal policy for the  
15 Government of Guam and its agencies and  
16 instrumentalities.

17 And so, is it better to have one Attorney  
18 General setting one coherent legal policy for all?  
19 Yes. What if the Attorney General becomes power mad  
20 and runs amok? Well, you know, that's what the elected  
21 process is for, and right now we have the elected  
22 Attorney General. And if his policies, if his control  
23 of legal decision are not in the best interests of the  
24 people of Guam, who are his real clients, and the  
25 Government of Guam.

1 THE COURT: See, that's the troubling part  
2 really, whether or not to settle for 50 or 60 million  
3 is not a legal question.

4 MR. WEINBERG: Well, I, I addressed that  
5 briefly earlier, I think I disagree, I think it shares  
6 legal and policy matters, policy decisions, because  
7 you're talking about the potential for liability,  
8 you're making liability judgments like an insurance  
9 company would in terms of what's in the best interests  
10 for the Government of Guam.

11 Now, I want to make sure that the Court  
12 understands that, as Mr. Phillips has said, there's  
13 been no testimony about a lot of the things that have  
14 been represented here today about who said what to  
15 whom, who the Lieutenant Governor consulted with. The  
16 Governor had people on staff, his staff were there and  
17 present at all sorts of meetings. We've had no  
18 testimony about that, because we limited it by  
19 agreement what today's hearings was going to be about.  
20 But just because there were representations that the  
21 Governor was out of the loop and didn't know what was  
22 going on is not an agreed upon presentment of the facts  
23 that we have here, and we had reserved that. That's  
24 why, in fact, we subpoenaed the Governor, that's why we  
25 had to subpoena our own clients.

1           You know, from the testimony that we had  
2 today, let me address that, this hostility that I've  
3 been charged with against my own clients, you know, we  
4 had to ask questions here about why did you leave the  
5 fold. We are your lawyers. And the first we hear of  
6 it is in November where they're saying that they have  
7 retained outside services, Rawlen Mantanona, and that  
8 they want us discharged. And I tried to go into some  
9 questions, and there were objections and I let it go,  
10 about, well, did you try and consult with the Attorney  
11 General if you had these questions, did you -- and we  
12 stopped that testimony and we can bring that back for  
13 another day.

14           But let's not repaint this with too many  
15 emotions about what this testimony was about. This  
16 testimony and the evidence, the arguments have to do  
17 with, with two line agencies under the direction of the  
18 Governor. I think that's very clear, the Governor's  
19 lawyers prepared all the paperwork, did all -- they  
20 delegated their responsibility to Shannon, their  
21 procurement authority to Shannon Taitano, I think  
22 that's all in evidence, and their legal positions shall  
23 we say are consistent with the Governor's philosophy of  
24 this case. So, they made the decision in November.  
25 They severed the attorney-client relationship. And we

Wanda M. Miles  
Official Court Reporter  
District Court of Guam



1 were inquiring for the Court's purposes why.

2 Now, we keep hearing these protestations about  
3 due process, I have a due process right to a lawyer of  
4 my choosing, but to be represented and my voice to be  
5 heard. Who is we is the question? Who is the client?

6 Under the Organic Act, it is the Government of  
7 Guam. Who is the Government of Guam? In litigation,  
8 it's whoever is sued and is before the Court; it's the  
9 Governor, the Director of RevTax, Director of  
10 Administration. They are the Government of Guam, and  
11 we represent them.

12 Oh, one last thing. A number of cases cited  
13 by the Governor, cases from Hawaii, Iowa, North  
14 Carolina, North Dakota, West Virginia, and they're  
15 cited -- Mr. Mantanona referred to one as the Chun  
16 case from Hawaii. If the Court will look at those  
17 cases closely, you'll see there that the authority of  
18 the Attorney General is expressly limited by statute.  
19 And you'll see what the courts hold, is they say things  
20 like -- let's see -- and we didn't have a chance to  
21 distinguish this for the Court because the Court had  
22 said it didn't want further briefing at the time.

23 But if the court would just look at those  
24 cases, the cases cited by the Governor, Hawaii, Iowa,  
25 North Carolina, and North Dakota I think is the case

1 that's cited, you'll find that unlike us, unlike Guam  
2 and the majority of jurisdictions that we cite where  
3 there's a constitutional basis for the office of the  
4 Attorney General being the chief legal officer, those  
5 cases cited by the Governor and Mr. Mantanona, the  
6 authority of the Attorney General is entirely  
7 statutory, which is what we had prior to the Organic  
8 Act amendments.

9 I wanted to point out that distinction to the  
10 court. And if there's nothing further, I rest.

11 THE COURT: In the situation before the Court,  
12 you don't believe that there's a conflict between your  
13 representation and the desires of those whom you  
14 represent?

15 MR. WEINBERG: I don't perceive there to be a  
16 conflict in an ethical sense, if the court is asking  
17 that.

18 There is, clearly, the Governor's Office does  
19 not want to abide by the agreement that it has signed.  
20 It has tendered or is attempting to tender reasons and  
21 argument as to the legality of it. Those questions I  
22 think can be answered or can be addressed in a fairness  
23 hearing or later down the line. Those questions will  
24 be answered and heard, someone will bring them up, and  
25 Mr. Phillips will have to defend whether they're legal

1 or whether they're not.

2 But essentially the Governor doesn't like the  
3 Attorney General as his lawyer in this case. And I  
4 think we can all agree on that. And the question is,  
5 when the Governor --

6 THE COURT: Even if he doesn't like the  
7 Attorney General, the Attorney General doesn't like the  
8 Governor --

9 MR. WEINBERG: I think, it seems to be that  
10 the feeling appears to be a little mutual. But that  
11 ought to be irrelevant to the question whether there  
12 are professional responsibilities.

13 THE COURT: Why does it become irrelevant  
14 when, if a person dislikes the other, then it seems  
15 that a rational decision for undertaking the  
16 representation, undertaking what it is that they  
17 propose to do becomes diminished because of the  
18 dislike?

19 MR. WEINBERG: The reason is, because it's  
20 not about personalities, because the Governor and Lou  
21 Perez and Art Ilagan are not sued in their individual  
22 capacity. Now what is going out to their pocketbook  
23 personally? They are sued in their representative  
24 capacity. The Governor and the directors of RevTax  
25 and DOA will come and go, the Attorney General will

1       come and go.

2               THE COURT:   (Overlapping.)   Well, I suppose --

3               MR. WEINBERG:   I'm sorry.

4               THE COURT:   Well, you know, I suppose we could  
5       look at the actions that are being undertaken here as  
6       attempts by each party to, let's say, defeat any  
7       desires to run for election.

8               MR. WEINBERG:   I should probably reserve  
9       comment on that, as to what they're doing to their  
10      respective reelection chances.

11              But the point is, it's not about  
12      personalities, and they may dislike each other with a  
13      passion.   And it may very well be that if we had  
14      testimony and the Governor was here to testify and I  
15      asked him some hostile questions about, well, did you  
16      talk to the Lieutenant Governor right after you got  
17      back from wherever you went, and did you reprimand him  
18      for signing that thing without you, and why did you  
19      send your own press secretary to hold the press  
20      conference for everybody, and if I asked questions like  
21      this of the Governor, that might be deemed hostile.

22              It's still just the Governor is having buyer's  
23      remorse, he's having second thoughts, whatever the  
24      reason, and those may be for Mr. Phillips and others to  
25      explore.   What the Attorney General knows is that we

1 have what appears to be a valid, binding agreement  
2 presented to this court and approved. Some objections  
3 may come up at a fairness hearing or other place, and  
4 the court will have an opportunity to reconsider --

5 THE COURT: Well, there has been conditional,  
6 I think, approval.

7 MR. WEINBERG: Yes, I understand there's  
8 conditions.

9 THE COURT: I mean, it's not an approval of  
10 the agreement, it's conditional based on what occurs at  
11 a later date.

12 MR. WEINBERG: And it's not filed, and there  
13 may be, you know, it's still up in the air, there are  
14 still things that -- but the first time we hear the  
15 Governor's objection, I mean this is just from the  
16 testimony I think that we heard, was not right when the  
17 Governor got back on island in June, and not in July,  
18 and not in August, but in September he starts to have  
19 some questions.

20 And why in September? Because Mr. Phillips  
21 was saying, hey, we have terms and conditions of the  
22 settlement agreement, are you complying with it, and  
23 he was asking questions and our office was forwarding  
24 those questions on, which our clients apparently  
25 determined was harassment of some type and they got

1     scared. I don't know, but they didn't contact us. I  
2     think the testimony we got that much out. They did not  
3     consult us, they went to the Governor and the Governor  
4     helped them get another lawyer, and a month later in  
5     November, we're having this question of Calvo and  
6     Clark's appearance and Mr. Mantanona's appearance in  
7     November, and them attempting to discharge us.

8             And it's at that time there that we're saying,  
9     okay, we have two more line agencies and the Governor  
10    need to be educated on what the law of Guam is. And  
11    again, it's just growing pains. And somebody, somebody  
12    said here that this court needs to put a stop to it,  
13    and it's like, yeah, and the best way to put a stop to  
14    it is to tell the government defendants who their  
15    lawyer is under the Organic Act, and under Guam law,  
16    and that's the Attorney General.

17            THE COURT: So basically, Mr. Weinberg, your  
18    argument is that under Section 5121(b) that you can  
19    never, you really can never find any firm representing  
20    government personnel, until you approve those contracts  
21    is what you're saying?

22            MR. WEINBERG: (Inaudible.)

23            THE COURT: They cannot legally represent  
24    without your approval, contracts by government  
25    employees for legal services?

1 MR. WEINBERG: I think the law is pretty self-  
2 explanatory, Your Honor. I mean, that's how I read it,  
3 that you do not have a valid contract to represent  
4 anyone. It's not -- I'm not even worried about the  
5 question of whether illegal payments have been made to  
6 Mr. Mantanona or not, or the law firm. I don't know  
7 whether payments have or have not been made, that's not  
8 my concern, but --

9 THE COURT: All right. So let's assume that  
10 the minute you see let's say Ms. Perez, you file a suit  
11 against her, and she goes sees Mr. Mantanona, are you  
12 saying that at that point in time that representation  
13 that is formalized is illegal?

14 MR. WEINBERG: If we were to sue Ms. Perez?

15 THE COURT: Right.

16 MR. WEINBERG: There are -- there are  
17 different ways to handle that kind of issue. And you  
18 know, my recommendation to whoever the Attorney General  
19 would be is that if she is sued in her official  
20 capacity to do something officially, and there is a  
21 legitimate dispute, and a real need to sue our client,  
22 then our clients ought to be authorized to retain  
23 independent counsel of their choice. That would be my  
24 recommendation. I can't say what a future Attorney  
25 General would do.

1 THE COURT: But your position is that no legal  
2 representation can commence until that contract is  
3 signed by the Attorney General?

4 MR. WEINBERG: Under the current state of the  
5 law, yes.

6 THE COURT: All right. So how is this  
7 defendant going to be represented at a crucial stage of  
8 the proceedings?

9 MR. WEINBERG: Like Ms. Perez?

10 THE COURT: Like Ms. Perez. She has her  
11 complaint, she has to appear for it in five days.

12 MR. WEINBERG: Are you talking -- I'm sorry,  
13 Your Honor, are you talking --

14 THE COURT: I'm talking about a hypothetical  
15 really. You're suing Ms. Perez, there's some writ, she  
16 has to appear in court in five days, she goes to see  
17 Mr. Mantanona; your position would be that that  
18 representation that has taken place there, and let's  
19 say whatever arrangements are illegal because you have  
20 not signed a legal services contract?

21 MR. WEINBERG: Or -- yes. Or, you know, or in  
22 the case of -- Mr. Phillips gave a great example of  
23 appearing on behalf of the school board, but he still  
24 needed the Attorney General's designation of him as a  
25 Special Assistant Attorney General to represent -- is



1 that right? -- to represent the board.

2 So if Ms. Perez went to Mr. Mantanona and had  
3 to appear in court for something she did as Director of  
4 Administration, there better be something in the court  
5 file that says that Mr. Mantanona is a duly authorized  
6 Special Assistant Attorney General to represent her, as  
7 is true of the Calvo --

8 THE COURT: When you're suing her directly?  
9 I'm talking about a hypothetical where you're suing her  
10 directly, the Attorney General, and she goes to Mr.  
11 Mantanona and formalizes a legal relationship, your  
12 viewpoint is that that legal relationship is invalid  
13 because you haven't yet signed a contract?

14 MR. WEINBERG: I think, to be hypertechnical,  
15 I would have to say yes, that it would be invalid.

16 Now, as a practical matter, that's something  
17 that can be worked out. I mean, either somebody can be  
18 authorized to retain independent of the Attorney  
19 General's Office, authorized to --

20 THE COURT: See, now you're talking exceptions  
21 to the statute.

22 MR. WEINBERG: We're talking hypothetical here  
23 too.

24 THE COURT: Right. And I'm trying to figure  
25 out how far those exceptions can go.

1 MR. WEINBERG: Well, as with everything in  
2 the law, it's all going to be fact specific. If this  
3 situation -- I mean I know what I would advise the  
4 Attorney General to do in a situation like this, if it  
5 was us suing somebody, I would say, hey, let them get  
6 their own lawyer, and, you know, fund it out of their  
7 own budget, and that this is, our case here --

8 THE COURT: See, but the attorney may be  
9 insistent on his legal rights as chief legal officer,  
10 I'm not going to sign any contract.

11 MR. WEINBERG: He may, or she may.

12 THE COURT: Let her undertake her legal  
13 representation on her own, and not have it funded by  
14 the government. She's being sued in her official  
15 capacity.

16 MR. WEINBERG: Well, and another way to deal  
17 with that is to have somebody within the office of  
18 Attorney General assigned who is segregated off, you  
19 know, a Chinese wall is surrounding that Assistant  
20 Attorney General. There are -- it just depends on what  
21 would happen.

22 In a worst case scenario, were the Attorney  
23 General to sue somebody then deny them the opportunity  
24 to have counsel, which is not what we have here, this  
25 is not the case we have here, all right, in the Santos

1 case here. But in that case --

2 THE COURT: But we're trying to deal perhaps  
3 with conflict situations, the immediate -- I mean,  
4 foreseeable conflict versus one that you say is not  
5 apparent here, not foreseeable.

6 MR. WEINBERG: Yes, but the difficulty I'm  
7 having in addressing the Court's concerns is conflicts  
8 are fact specific, we need concrete examples of a  
9 conflict and what to do in a situation, that kind of  
10 situation. The hypothetical the Court envisions in all  
11 likelihood would never happen, because it would be a  
12 foolish Attorney General who would sue someone and then  
13 deny them counsel, or an opportunity to hire counsel.

14 Now, were that to happen, you might have  
15 another matter in Superior Court somewhere on a writ,  
16 that in this case there needs to be an exception carved  
17 out, or an interpretation. Part of the issue of the  
18 Attorney General's responsibility to sign legal  
19 contracts is the interpretation of that statute, which  
20 is up on -- in the Supreme Court.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. CALVO: If I may, Your Honor, just a  
24 couple of points?

25 THE COURT: All right, Mr. Calvo.

1 MR. CALVO: I'll be brief, Your Honor.

2 First of all, in both Mr. Phillips's argument  
3 as well as Mr. Weinberg, there was discussion of  
4 matters that I think will be brought up in the next  
5 hearing regarding the administrative plan and some of  
6 the other issues that I won't address now, but we  
7 would, and we're prepared to address, but that we  
8 understand for another day.

9 THE COURT: That's correct, yes.

10 MR. CALVO: With respect to the law, Your  
11 Honor, the Attorney General has not cited one case  
12 where the Governor could not be represented or could  
13 not be heard. In fact, the case that he cited from his  
14 home state in Alabama, the Court ruled that the  
15 Governor could intervene in a proceeding that was  
16 brought by the Attorney General on behalf of the state  
17 -- I believe it was the state commissioner. But the  
18 Governor in that case was allowed to intervene and to  
19 be heard and to be represented.

20 With respect to --

21 THE COURT: But in that case, is there like a  
22 constitutional provision regarding the office of the  
23 Attorney General?

24 MR. CALVO: I'm not sure, Your Honor.

25 THE COURT: Because he's making a distinction

1 that in the Hawaii case and all these other cases, the  
2 Court went in that direction because the office of the  
3 Attorney General was a statutorily created office,  
4 whereas the office of the Attorney General here in Guam  
5 is not, it's in a sense constitutional because it's in  
6 the Organic Act.

7 MR. CALVO: I could answer that for you if you  
8 give me a little time, Your Honor, but I know that the  
9 Governor in that case was allowed to intervene. And  
10 the reason I raise it is because he gave that as an  
11 example, otherwise I wouldn't have mentioned that case.

12 The important point, Your Honor, is that  
13 there's no case cited for the proposition that the  
14 Governor could not be heard in the matter; whether or  
15 not it was a statutory provision or a statutory -- a  
16 constitutional provision, there was no case cited for  
17 that proposition by the Attorney General.

18 Under Guam law, I think under the Organic Act  
19 it's clear that the Governor has the supervisory  
20 control of the executive branch. And in that, in those  
21 powers and in that authority, he has the right to hire  
22 counsel in situations just like this, where there is a  
23 conflict with the Attorney General's Office and there  
24 isn't adequate representation.

25 Mr. Phillips raised a point, which I think is

1 a good point, about the duty of the Attorney General,  
2 that if the Governor has a claim or has a disagreement,  
3 it's the Attorney General's obligation to raise that  
4 with the court, especially in a class action where the  
5 Court has an affirmative duty to protect the class, to  
6 get the issues out and deal with this, whether it's at  
7 a fairness hearing on any stage in litigation..

8 In the Attorney General's brief the Attorney  
9 General has a section called "Governor's concerns". He  
10 says the Governor has concerns, don't worry about them,  
11 they're not relevant, he has nothing to say, I'm not  
12 subject to the direction or the concerns or the whims  
13 of a client. That's how he informed the Court he was  
14 proceeding. So the Governor's concerns weren't voiced  
15 or expressed to the Court by the Governor's attorney,  
16 the Attorney General.

17 That's all I have, Your Honor.

18 THE COURT: Does anybody else want to say any  
19 final word?

20 MR. PHILLIPS: Your Honor, briefly.

21 Your Honor, I think one way to distinguish the  
22 ethical conflict here is that in this case you have the  
23 Assistant Attorney General who have done everything in  
24 their power to save their clients from me, and that's  
25 very different from Mr. Weinberg or Mr. Cohen taking it

1 upon themselves to sue Lou Perez or Art Ilagan. Then  
2 they would be protecting them from them, and that's  
3 very different, they would be moving for OSC.

4 Your Honor, I met with them, I did everything  
5 I could for an hour to try and get something out of  
6 them, they know I was pissed off, I couldn't get  
7 anything out from them. They covered their clients all  
8 the way. I knew I no longer had the free will or the  
9 ability or the permission to contact the co-defendants  
10 that has always been open in the past, I didn't have  
11 that any more, so I couldn't ask them, hey, did you pay  
12 the money. I wrote letters to the AG, no response.

13 Your Honor knows that because in a chamber  
14 conference I raised that with them, I said I've heard  
15 nothing from you guys, they did every single thing they  
16 could to cover for their clients. And that's the  
17 difference, Your Honor. They may be on the phone with  
18 their clients yelling at them saying, hey, you guys  
19 gotta do something, Phillips is a nut, but at the same  
20 time, Your Honor, that's very different from saying,  
21 you guys better hurry up or I'm going to do something,  
22 that's when they're pitted like that. Right now  
23 they're the buffer, you know, they may be on the front  
24 lines or they may be the general depending on what the  
25 issue is, Your Honor, but they're still on the same

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District Court of Guam

1 side, they still are.

2 And that's the difference between them suing  
3 one of the witnesses that you heard today, they'd be  
4 moving for the OSC. Today, Your Honor, they've done a  
5 good job of, I won't say preventing me, but stalling  
6 and doing everything in their power to prevent me from  
7 filing an OSC. And that's their job, and that's the  
8 difference, Your Honor, it's not a direct conflict like  
9 it would be if they sued their own clients in that  
10 sense.

11 THE COURT: I agree with you, Mr. Phillips,  
12 when you said that Phillips is a pugua nut.

13 (Laughter.)

14 Mr. Mantanona?

15 MR. MANTANONA: A few points, Your Honor. I  
16 find it, that this matter is before the Court and the  
17 court can generally see what's going on here, basically  
18 appears that the Attorney General and the plaintiffs  
19 are consistent in their position; their position is  
20 consistently against named defendants, and that is  
21 wrong.

22 Further, Your Honor, it appears that there's  
23 all this talk about the super powers of the Attorney  
24 General's Office, but those super powers have to be  
25 defined by court decisions, and by legislation. It's



1 not an unlimited amount of power as assumed by the  
2 government at this point, basing it upon decisions of  
3 other courts. Those other court jurisdictions are  
4 nothing more than assisting or persuasive argument,  
5 they are not controlling. It is for this court to  
6 determine how the law applies to this jurisdiction.

7 With all due respect, we submit on behalf of  
8 Mr. Ilagan and Ms. Perez. Thank you, Your Honor.

9 THE COURT: All right. We've heard excellent  
10 arguments, really, from counsel in this matter. Today,  
11 I wish to commend counsel for their arguments; also  
12 Mr. Phillips for just sitting there patiently listening  
13 to the court, just listening to the arguments that have  
14 been made to the court by all other counsel.

15 There's various arguments have been made  
16 today, arguments I think that I need to give a second  
17 look at, and just deliberate more before a final  
18 decision comes out. And I say that because you've  
19 presented arguments to me that still has not convinced  
20 me which way to go in this matter. So I'm going to  
21 have to review the arguments that you've made, look at  
22 the authorities that have been cited, and make a  
23 decision because the decision that ultimately is going  
24 to be made here is a very important decision. And it  
25 being an important decision, I have always taken at

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 least a good night's rest in thinking of these issues  
2 before deciding, and I have always thought that  
3 deciding with a written decision is always best so that  
4 we can fully explain the rationale that we have reached  
5 in formally deciding the matter.

6 So I'm going to take this motion under  
7 submission. Right now the parties are eager that a  
8 decision be made, I will try to be prompt in making  
9 the decision, because there are other pending matters,  
10 Mr. Phillips's motion, and there may be other motions  
11 that perhaps will be made after the Court has decided  
12 this matter.

13 So the motion will be taken under submission  
14 and to be decided promptly by the Court. And in so  
15 doing that, again, I wish to thank you all, counsel,  
16 for being here today, thank you for again enlightening  
17 the court in terms of the issues that it must look at  
18 in terms of arriving at an informed decision in this  
19 matter. And thank you all for the fine arguments that  
20 you've made to the court today. I'm proud to be here  
21 listening to your arguments this morning and afternoon.

22 Thank you very much. And I hope to get a  
23 decision out as soon as possible.

24 Thank you.

25 ALL COUNSEL: Thank you, Your Honor.

(Whereupon proceedings concluded at 4:26 p.m.)

\* \* \*

CERTIFICATE OF REPORTER

CITY OF AGANA            )  
                                  ) ss.  
TERRITORY OF GUAM        )

I, Wanda M. Miles, Official Court Reporter  
of the District Court of Guam, do hereby certify the  
foregoing pages 1-199, inclusive, to be a true and  
correct transcript of the digital recording made of the  
within-entitled proceedings, at the date and times  
therein set forth.

Dated this 4th day of February, 2005.

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